

**DECLARATION OF
VIOLA TREBICKA
ISO DEFENDANT
GOOGLE LLC'S
OPPOSITION TO
PLAINTIFFS'
MOTION IN LIMINE 5
RE: DISPARAGING
EVIDENCE OR
ARGUMENT**

**Redacted Version of
Document Sought to
be Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**DECLARATION OF VIOLA TREBICKA
IN SUPPORT OF DEFENDANT GOOGLE
LLC'S OPPOSITION TO PLAINTIFFS'
MOTION *IN LIMINE* 5 RE:
DISPARAGING EVIDENCE OR
ARGUMENT**

The Honorable Yvonne Gonzalez Rogers
Date: November 29, 2023
Time: 9:00 a.m.
Location: Courtroom 1 – 4th Floor

Trial Date: January 29, 2024

1 I, Viola Trebicka, declare as follows:

2 1. I am a member of the bar of the State of California and a partner with Quinn Emanuel
3 Urquhart & Sullivan, LLP. I make this declaration of my own personal, firsthand knowledge, and if
4 called and sworn as a witness, I could and would testify competently thereto.

5 2. I submit this declaration in support of Google's Opposition to Plaintiffs' Motion *in*
6 *Limine* 5 re: Disparaging Evidence or Argument.

7 3. Attached hereto as Exhibit A is a true and correct excerpted copy of Plaintiff William
8 Byatt's deposition transcript, dated December 20, 2021.

9 4. Attached hereto as Exhibit B is a true and correct excerpted copy of Plaintiff Chasom
10 Brown's deposition transcript, dated January 13, 2022.

11 5. Attached hereto as Exhibit C is a true and correct copy of a document produced
12 during discovery bearing Bates number GOOG-BRWN-00225677.

13 6. Attached hereto as Exhibit D is a true and correct copy of Plaintiffs' Exhibit List,
14 served on Google on August 24, 2023.

15 7. Attached hereto as Exhibit E is a true and correct excerpted copy of Brian
16 Rakowski's deposition transcript, dated August 19, 2021.

17 I declare under penalty of perjury of the laws of the United States that the foregoing is true
18 and correct.

19 Executed in Los Angeles, California on October 17, 2023.

20 By /s/ Viola Trebicka
21 Viola Trebicka
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EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 CHASOM BROWN, WILLIAM BYATT,
5 JEREMY DAVIS, CHRISTOPHER
6 CASTILLO, and MONIQUE TRUJILLO,
7 individually and on behalf of
8 all other similarly situated

9 Plaintiffs, CASE NO.
10 5:20-CV-03664-LHK-SVK
11 VS.

12 GOOGLE LLC

13 Defendant.

14 *****
15 ZOOM VIDEOTAPED DEPOSITION OF WILLIAM BYATT
16 December 20, 2021
17 11:04 a.m. EST
18 *****

19 TAKEN BY:
20 VIOLA TREBICKA, ESQ.
21 ATTORNEY FOR DEFENDANT

22 REPORTED BY:
23 BELLE VIVienne, CRR
24 CERTIFIED STENOGRAPHIC
25 REALTIME COURT REPORTER
VERITEXT LEGAL SOLUTIONS
JOB NO. 5001125
866 299-5127

| | |
|---|---|
| <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 JAMES W LEE, ESQ</p> <p>4 ROSSANA BAEZA, ESQ</p> <p>5 MARK MAO, ESQ (San Francisco)</p> <p>6 BOIES SCHILLER FLEXNER LLP</p> <p>7 100 SE 2nd Street, Suite 2800</p> <p>8 Miami, Florida 33131</p> <p>9 305 539 8400</p> <p>10 jlee@bsflp.com</p> <p>11 RYAN J MCGEE, ESQ</p> <p>12 MORGAN & MORGAN, P A</p> <p>13 201 North Franklin Street, 7th Floor</p> <p>14 Tampa, Florida 33602</p> <p>15 813 223 5505</p> <p>16 rmcgee@forthepeople.com</p> <p>17 FOR THE DEFENDANT:</p> <p>18 VIOLA TREBICKA, ESQ</p> <p>19 TRACY GAO, ESQ</p> <p>20 QUINN EMANUEL URQUHART & SULLIVAN LLP</p> <p>21 865 S Figueroa St, 10th Floor</p> <p>22 Los Angeles, California 90017</p> <p>23 213 443 3000</p> <p>24 Violatrebicka@quinnemanuel.com</p> <p>25 VIDEOGRAPHER:</p> <p>JoAnn Yager</p> <p>Page 2</p> | <p>1 - - -</p> <p>2 EXHIBITS (Continued.)</p> <p>3 - - -</p> <p>4</p> <p>5 NO. DESCRIPTION PAGE</p> <p>6 Exhibit 6 Google Terms of Services</p> <p>7 effective dates</p> <p>8 04/16/2007 to 02/29/2012...104</p> <p>9 Exhibit 7 Google Privacy Policy.....112</p> <p>10 Exhibit 8 Screenshot of Chrome's</p> <p>11 You've Gone Incognito</p> <p>12 pop-up screen from</p> <p>13 08/20/2020.....123</p> <p>14 Exhibit 9 How Private Browsing</p> <p>15 Works in Chrome Google</p> <p>16 document.....142</p> <p>17 Exhibit 10 Google Search Help</p> <p>18 Document.....148</p> <p>19 Exhibit 11 Second Amended Complaint...156</p> <p>20 Exhibit 12 May 12, 2021 Amended</p> <p>21 Responses and Objections</p> <p>22 to Google's</p> <p>23 Interrogatories Number 1,</p> <p>24 4 and 5.....166</p> <p>25</p> <p>Page 4</p> |
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| | |
|--|--|
| 1 A. I do. 12:50:10 | 1 still finishing his prior answer, 12:52:18 |
| 2 MR. LEE: Viola, do I have the 12:50:10 | 2 Viola. 12:52:21 |
| 3 same standing objection for this 12:50:11 | 3 A. Yeah, I'm -- I'm sure I have 12:52:21 |
| 4 document as for lack of foundation? 12:50:13 | 4 noticed, but I can't sit here saying that 12:52:23 |
| 5 MS. TREBICKA: Yes, that's fine. 12:50:14 | 5 I recall specific ads that I've -- that I 12:52:29 |
| 6 MR. LEE: Thanks. 12:50:16 | 6 have seen. I certainly don't recall 12:52:32 |
| 7 BY MS. TREBICKA: 12:50:16 | 7 whether they've been served by Google. 12:52:34 |
| 8 Q. Do you see how you can turn it 12:50:17 | 8 BY MS. TREBICKA: 12:52:34 |
| 9 on or turn it off? 12:50:18 | 9 Q. I'm not asking about specific 12:52:40 |
| 10 A. I do see those buttons, yes. 12:50:19 | 10 ads. 12:52:42 |
| 11 Q. And do you also see the 12:50:22 | 11 A. Sure. 12:52:43 |
| 12 hyperlink down there "learn more about how 12:50:24 | 12 Q. However, my question relates to 12:52:45 |
| 13 Google ads work"? 12:50:25 | 13 whether you know whether ads are served 12:52:47 |
| 14 A. Oh, it took me a second to find 12:50:28 | 14 while you are in Incognito mode to you? 12:52:51 |
| 15 it, but, yes, I do. 12:50:30 | 15 MR. LEE: Asked and answered. 12:52:54 |
| 16 Q. Do you -- have you ever clicked 12:50:31 | 16 A. Do I continue to answer again? 12:52:57 |
| 17 on that link to your memory as far -- 12:50:35 | 17 BY MS. TREBICKA: 12:52:57 |
| 18 A. I don't -- I don't remember 12:50:40 | 18 Q. Yes. 12:52:59 |
| 19 ever -- whether or not I've ever been on 12:50:41 | 19 A. Okay. Yeah, I believe ads are 12:53:00 |
| 20 this page so I certainly don't remember 12:50:43 | 20 served to me in Incognito mode. I just 12:53:04 |
| 21 whether I've ever clicked on that link, 12:50:45 | 21 don't recall any particular details. 12:53:06 |
| 22 but I don't know what's on the other side 12:50:47 | 22 Q. When you are in Incognito mode, 12:53:09 |
| 23 of that link to know if I have seen what's 12:50:49 | 23 do you browse for extended periods of time 12:53:16 |
| 24 on the other side of that link. 12:50:52 | 24 or for limited periods of time? 12:53:21 |
| 25 Q. That's all fair. Have you ever 12:50:54 | 25 MR. LEE: Objection to form. 12:53:29 |
| Page 90 | Page 92 |
| 1 looked into documents that explain how 12:50:55 | 1 A. Yeah, I'd say both. Probably 12:53:30 |
| 2 Google ads work? 12:50:58 | 2 more often I'd say shorter periods of time 12:53:31 |
| 3 A. I'm sure I have, yes. 12:51:02 | 3 but not exclusively. 12:53:33 |
| 4 Q. And those documents also explain 12:51:08 | 4 BY MS. TREBICKA: 12:53:33 |
| 5 how Google ads uses user data? 12:51:11 | 5 Q. When you browse for longer 12:53:36 |
| 6 A. To some extent, yes. I -- I 12:51:15 | 6 periods of time, what kinds of browse -- 12:53:38 |
| 7 can't say for sure whether I've seen 12:51:16 | 7 what kinds of browsing is that? 12:53:40 |
| 8 authoritative documents from Google about 12:51:20 | 8 MR. LEE: Objection to form. 12:53:47 |
| 9 how ad personalization works or whether 12:51:22 | 9 A. Yeah, I don't -- I don't really 12:53:49 |
| 10 the things that I have seen have been 12:51:25 | 10 know how to answer that. It would look 12:53:51 |
| 11 third party or general explainers. So 12:51:29 | 11 like probably mostly reading news and 12:53:55 |
| 12 anything that I've seen, I don't -- I 12:51:34 | 12 things like that for more extended 12:54:07 |
| 13 don't know how accurate or how -- I don't 12:51:37 | 13 periods, but, yeah, I can't say 12:54:09 |
| 14 know how accurate the information that 12:51:40 | 14 specifically. 12:54:12 |
| 15 I've seen has been. And I do not recall 12:51:42 | 15 BY MS. TREBICKA: 12:54:12 |
| 16 if any of that information has been 12:51:44 | 16 Q. When you browse on Incognito for 12:54:16 |
| 17 represented by Google. 12:51:46 | 17 an extended period of time, do you have 12:54:18 |
| 18 Q. When you are in Incognito mode, 12:51:50 | 18 one tab in Incognito open or do you have 12:54:20 |
| 19 do you receive ads? Let me rephrase that. 12:51:52 | 19 multiple Incognito tabs open? 12:54:24 |
| 20 When you are in Incognito mode, 12:51:57 | 20 A. It varies, but I could have 12:54:26 |
| 21 are ads displayed to you when you browse? 12:51:59 | 21 multiple tabs open. 12:54:29 |
| 22 A. Probably. I would think so. I 12:52:02 | 22 Q. So sometimes you have one, 12:54:29 |
| 23 don't know, to be honest. 12:52:08 | 23 sometimes you have multiple; it varies? 12:54:31 |
| 24 Q. You have never noticed -- 12:52:14 | 24 A. That's correct. 12:54:36 |
| 25 MR. LEE: Well, I think he was 12:52:17 | 25 Q. When you have multiple tabs 12:54:36 |
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| | |
|--|--|
| 1 last answer before you moved on. 15:51:50 | 1 Have you -- do you have a Chrome 15:54:04 |
| 2 That's -- I think this is a reasonable 15:51:52 | 2 application on your handheld device? 15:54:07 |
| 3 request and certainly proper under the 15:51:53 | 3 A. Yes. 15:54:12 |
| 4 rules. 15:51:55 | 4 Q. And you use that to browse? 15:54:13 |
| 5 BY MS. TREBICKA: 15:51:55 | 5 A. Yes. 15:54:15 |
| 6 Q. Mr. Byatt, were you finished 15:51:55 | 6 Q. Do you use it to browse in 15:54:16 |
| 7 with your answer? 15:51:57 | 7 Incognito mode? 15:54:17 |
| 8 A. What I was going to say was that 15:51:59 | 8 A. Yes. 15:54:19 |
| 9 I don't know everything that Google does 15:52:00 | 9 Q. When you use the Chrome 15:54:20 |
| 10 or syncs up when I log in to the Chrome 15:52:04 | 10 application on your handheld device to 15:54:22 |
| 11 application, but I do know that I can log 15:52:07 | 11 browse in Incognito mode, have you also at 15:54:25 |
| 12 in to Chrome and log in to Gmail 15:52:10 | 12 the same time logged in to your Gmail 15:54:28 |
| 13 separately. 15:52:12 | 13 account? 15:54:32 |
| 14 Q. Mr. Byatt, do you understand 15:52:15 | 14 A. I do not recall. 15:54:32 |
| 15 that there are two ways in which you can 15:52:16 | 15 Q. And when you have used your 15:54:35 |
| 16 use Chrome, one is on your mobile device 15:52:19 | 16 Chrome application on your handheld device 15:54:37 |
| 17 and one is on your computer? 15:52:21 | 17 to browse in Incognito mode, have you also 15:54:39 |
| 18 A. I don't know if those are the 15:52:25 | 18 at the same time logged in to any other 15:54:42 |
| 19 only two ways, but I do agree that those 15:52:28 | 19 Google accounts that you may have? 15:54:45 |
| 20 are two ways, yes. 15:52:31 | 20 A. Inside of Chrome? 15:54:47 |
| 21 Q. Do you use Chrome in any other 15:52:32 | 21 Q. Yes, inside of Chrome for now. 15:54:49 |
| 22 way? 15:52:34 | 22 A. Yeah, that -- I do not recall 15:54:52 |
| 23 A. Yes, actually. I have used 15:52:39 | 23 ever having done that. 15:54:53 |
| 24 Chrome in another way. 15:52:41 | 24 Q. What about outside of Chrome? 15:54:54 |
| 25 Q. Tell me what that way is. 15:52:42 | 25 A. I have certain -- my cell phones 15:54:57 |
| Page 186 | Page 188 |
| 1 A. I have used Chrome inside of 15:52:44 | 1 have always been Android phones, so if I'm 15:55:00 |
| 2 virtual machines for software development 15:52:48 | 2 browsing in Incognito mode on my phone, 15:55:07 |
| 3 testing and I have used Chrome in a way 15:52:52 | 3 that phone is logged in to my account and 15:55:10 |
| 4 that is automated for the purpose of 15:52:58 | 4 I'll have the Gmail application on the 15:55:14 |
| 5 testing software. 15:53:02 | 5 phone that is logged in to my Google 15:55:16 |
| 6 Q. And is that on a computer? 15:53:04 | 6 account. It -- I would imagine, I 15:55:19 |
| 7 A. That is on a computer, yes. 15:53:07 | 7 probably have other applications that are 15:55:22 |
| 8 Q. So limiting your answers 15:53:09 | 8 also logged in to the Google account. 15:55:24 |
| 9 initially to using Chrome on a computer 15:53:11 | 9 Q. You have listed here a few -- 15:55:27 |
| 10 and what I'm limiting it to is you opening 15:53:13 | 10 and by "here," I mean on Exhibit 13, you 15:55:35 |
| 11 a browsing session on Chrome. 15:53:16 | 11 have listed here a few e-mail accounts. 15:55:40 |
| 12 As far as you being in the 15:53:21 | 12 Do you see that? 15:55:43 |
| 13 Chrome browser on a computer and being in 15:53:24 | 13 A. I do, yes. 15:55:44 |
| 14 Incognito, have you ever logged in to your 15:53:28 | 14 Q. And the first two e-mail 15:55:46 |
| 15 Gmail accounts once you have been in 15:53:31 | 15 accounts, [REDACTED] and 15:55:47 |
| 16 that -- in that environment? 15:53:34 | 16 [REDACTED] are these your personal 15:55:56 |
| 17 A. I do not recall specifically 15:53:39 | 17 accounts or what you would consider your 15:55:58 |
| 18 ever having done that. 15:53:40 | 18 personal Google accounts? 15:55:59 |
| 19 Q. Have you logged in to any of 15:53:48 | 19 A. Yes. 15:56:00 |
| 20 your Google accounts, any other Google 15:53:49 | 20 Q. You have listed here an 15:56:01 |
| 21 accounts you may have once you have been 15:53:52 | 21 additional three Google accounts: 15:56:04 |
| 22 in Incognito on your computer? 15:53:54 | 22 Scm@miamidadedems.org, 15:56:06 |
| 23 A. I do not recall ever 15:53:57 | 23 treasurer@miamidadedems.org, and 15:56:12 |
| 24 specifically having done that. 15:53:58 | 24 william.byatt@miamiprogressives.org. 15:56:15 |
| 25 Q. Now, moving on to your device. 15:54:02 | 25 Do you see that? 15:56:21 |
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| | |
|--|---|
| 1 A. I do. 15:56:21 | 1 A. State Committeeman. 15:58:47 |
| 2 Q. Are these your personal Google 15:56:22 | 2 Q. Do you currently hold these 15:58:52 |
| 3 accounts too? 15:56:24 | 3 positions, these two positions? 15:58:53 |
| 4 A. No. 15:56:24 | 4 A. I -- I -- I am sorry for that, 15:58:57 |
| 5 Q. How would you describe these 15:56:25 | 5 Belle. I hold the State Committeeman 15:59:00 |
| 6 accounts? 15:56:26 | 6 seat. I am no longer the treasurer, and I 15:59:04 |
| 7 A. Those are accounts that I have 15:56:26 | 7 no longer have access to that account 15:59:06 |
| 8 in my various roles as working with 15:56:30 | 8 either. 15:59:09 |
| 9 certain organizations. The Miami-Dade 15:56:38 | 9 Q. Do you use -- as far as the two 15:59:10 |
| 10 Democratic Party for the two that end in 15:56:40 | 10 personal accounts, do you use them 15:59:20 |
| 11 MiamiDadeDems.org, and the Democratic 15:56:46 | 11 equally? 15:59:22 |
| 12 Progressive Caucus of Miami-Dade for the 15:56:48 | 12 A. No, I do not. 15:59:24 |
| 13 ones that end in MiamiProgressives.org. 15:56:52 | 13 Q. Do you no longer use one of 15:59:24 |
| 14 Q. Focusing your attention on the 15:56:55 | 14 them? 15:59:28 |
| 15 two personal Gmail accounts, have you ever 15:56:58 | 15 A. I would say that I use the one 15:59:31 |
| 16 shared them with anyone? 15:57:00 | 16 that's listed first [REDACTED] 15:59:34 |
| 17 MR. LEE: Objection to form. 15:57:03 | 17 I use that as my sort of main functional 15:59:39 |
| 18 A. Can you clarify what you mean by 15:57:06 | 18 account. The other one I do still 15:59:44 |
| 19 "shared"? 15:57:07 | 19 occasionally use, but mostly for spam and 15:59:48 |
| 20 BY MS. TREBICKA: 15:57:07 | 20 a couple of websites that I may have just 15:59:55 |
| 21 Q. Does anyone else have access to 15:57:08 | 21 never changed what my e-mail address on 15:59:58 |
| 22 the credentials for these two accounts? 15:57:10 | 22 record was with them. 16:00:01 |
| 23 A. I certainly hope not. 15:57:14 | 23 Q. Do you sign into them at the 16:00:08 |
| 24 Q. What about the three accounts 15:57:15 | 24 same rate, at the same frequency? 16:00:09 |
| 25 that are associated with your various 15:57:21 | 25 A. Well, I -- so my browser 16:00:17 |
| Page 190 | Page 192 |
| 1 roles at -- at organizations, are those 15:57:24 | 1 preserves which accounts I'm logged in to 16:00:26 |
| 2 shared accounts? 15:57:28 | 2 and I'm -- I'm basically constantly logged 16:00:32 |
| 3 A. Sort of. 15:57:29 | 3 in to both of them. In terms of actually 16:00:37 |
| 4 Q. What do you mean by "sort of"? 15:57:33 | 4 accessing and using, I certainly use the 16:00:42 |
| 5 A. I mean two things. First is 15:57:34 | 5 [REDACTED] one more. 16:00:53 |
| 6 that they are all, you know, administered 15:57:36 | 6 Q. What about the two 16:00:54 |
| 7 accounts much like a corporate Gmail 15:57:43 | 7 organization-related ones that you still 16:00:57 |
| 8 account would be. So the administrators, 15:57:46 | 8 have access to, which my understanding is, 16:01:00 |
| 9 the -- the -- they used to call it 15:57:50 | 9 is william.byatt@miamiprogressives.org and 16:01:03 |
| 10 G Suites, I believe they now call it 15:57:53 | 10 scm@miamidadedems.org, are you constantly 16:01:09 |
| 11 Google Workspaces, the -- the people in 15:57:56 | 11 logged in to both as well? 16:01:14 |
| 12 those organizations who administer the 15:57:57 | 12 A. Yes. 16:01:17 |
| 13 organization's Google account would have 15:58:04 | 13 Q. Do you use both of those 16:01:18 |
| 14 administrative access to those. Also, 15:58:08 | 14 equally? 16:01:21 |
| 15 scm@miamidadedems.org and 15:58:11 | 15 A. Can you explain what you mean by 16:01:24 |
| 16 treasurer@miamidadedems.org, those are 15:58:15 | 16 "use"? 16:01:26 |
| 17 both e-mail accounts that belong to a 15:58:19 | 17 Q. Go in to -- 16:01:26 |
| 18 position. Only one person holds those 15:58:21 | 18 MR. LEE: Before we -- before 16:01:26 |
| 19 positions at any given time, but the 15:58:24 | 19 we -- excuse me. Before we go 16:01:29 |
| 20 e-mail account transfers who has those 15:58:26 | 20 further, Viola, I'm just looking at 16:01:30 |
| 21 credentials when a new person has those -- 15:58:29 | 21 some correspondence that -- that 16:01:32 |
| 22 those seats, those offices. 15:58:33 | 22 states that Mr. Byatt revoked consent 16:01:33 |
| 23 Q. What does SCM stand for in that 15:58:35 | 23 for the two accounts that you're 16:01:35 |
| 24 account that says -- or that is 15:58:39 | 24 inquiring about. So I'm not sure that 16:01:37 |
| 25 scm@miamidadedems.org? 15:58:42 | 25 your inquiry into those accounts is 16:01:43 |
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| <p>1 (Time noted: 5:45 p.m.)</p> <p>2</p> <p>3</p> <p>4 WILLIAM BYATT</p> <p>5</p> <p>6 Subscribed and sworn to</p> <p>7 before me this _____</p> <p>8 day of _____ 2022.</p> <p>9</p> <p>10 Notary Public</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 258</p> | <p>1 VIOLA TREBICKA, ESQ.</p> <p>2 violatrebicka@quinnemanuel.com</p> <p>3 December 23, 2021</p> <p>4 RE: BROWN VS. GOOGLE LLC</p> <p>5 DECEMBER 20, 2021, WILLIAM BYATT, JOB NO. 5001125</p> <p>6 The above-referenced transcript has been</p> <p>7 completed by Veritext Legal Solutions and</p> <p>8 review of the transcript is being handled as follows:</p> <p>9 __ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext</p> <p>10 to schedule a time to review the original transcript at</p> <p>11 a Veritext office.</p> <p>12 __ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF</p> <p>13 Transcript - The witness should review the transcript and</p> <p>14 make any necessary corrections on the errata pages included</p> <p>15 below, notating the page and line number of the corrections.</p> <p>16 The witness should then sign and date the errata and penalty</p> <p>17 of perjury pages and return the completed pages to all</p> <p>18 appearing counsel within the period of time determined at</p> <p>19 the deposition or provided by the Code of Civil Procedure.</p> <p>20 __ Waiving the CA Code of Civil Procedure per Stipulation of</p> <p>21 Counsel - Original transcript to be released for signature</p> <p>22 as determined at the deposition.</p> <p>23 __ Signature Waived – Reading & Signature was waived at the</p> <p>24 time of the deposition.</p> <p>25</p> <p>Page 260</p> |
| <p>1 CERTIFICATION</p> <p>2</p> <p>3 I, BELLE VIVIENNE, a Nationally</p> <p>4 Certified Realtime Reporter, do hereby</p> <p>5 certify:</p> <p>6 That the witness whose testimony as</p> <p>7 herein set forth, was duly sworn by me;</p> <p>8 and that the within transcript is a true</p> <p>9 record of the testimony given by said</p> <p>10 witness.</p> <p>11 I further certify that I am not</p> <p>12 related to any of the parties to this</p> <p>13 action by blood or marriage, and that I am</p> <p>14 in no way interested in the outcome of</p> <p>15 this matter.</p> <p>16 IN WITNESS WHEREOF, I have hereunto</p> <p>17 set my hand this 23rd day of December</p> <p>18 2021.</p> <p>19</p> <p>20 <i>Belle Vivienne</i></p> <p>21 BELLE VIVIENNE, CKR, CCR, RPR</p> <p>22</p> <p>23 * * *</p> <p>24</p> <p>25</p> <p>Page 259</p> | <p>1 __ Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF</p> <p>2 Transcript - The witness should review the transcript and</p> <p>3 make any necessary corrections on the errata pages included</p> <p>4 below, notating the page and line number of the corrections.</p> <p>5 The witness should then sign and date the errata and penalty</p> <p>6 of perjury pages and return the completed pages to all</p> <p>7 appearing counsel within the period of time determined at</p> <p>8 the deposition or provided by the Federal Rules.</p> <p>9 _X_ Federal R&S Not Requested - Reading & Signature was not</p> <p>10 requested before the completion of the deposition.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 261</p> |

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE
TRUJILLO, individually and on
behalf of all other similarly
situated,

Plaintiffs,

vs. No. 5:20-cv-03664-LHK-SVK

GOOGLE LLC,

Defendant.

_____ /

VIDEOTAPED DEPOSITION OF CHASOM BROWN
Remote Zoom Proceedings
Los Angeles, California
Thursday, January 13, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Pages 1 - 208

Job No. 5028094

Page 1

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| <p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 4 5 6 CHASOM BROWN, WILLIAM BYATT, 7 JEREMY DAVIS, CHRISTOPHER 8 CASTILLO, and MONIQUE 9 TRUJILLO, individually and on 10 behalf of all other similarly 11 situated, 12 13 Plaintiffs, 14 15 vs. No. 16 5:20-cv-03664-LHK-SVK 17 GOOGLE LLC, 18 19 Defendant. 20 _____/ 21 22 23 24 25</p> <p>Videotaped deposition of CHASOM BROWN, taken on behalf of the Defendant, Remote Zoom Proceedings from Los Angeles, California, beginning at 9:52 a.m. Pacific Standard Time and ending at 5:20 p.m. Pacific Standard Time, on Thursday, January 13, 2022, before Leslie Rockwood Rosas, RPR, Certified Shorthand Reporter No. 3462.</p> <p>Page 2</p> | <p>1 APPEARANCES (Continued): 2 3 FOR THE DEFENDANT: 4 QUINN EMANUEL URQUHART & SULLIVAN, LLP 5 BY: SARA JENKINS, ESQ. 6 TRACY XI GAO, ESQ. 7 555 Twin Dolphin Drive, 5th Floor 8 Redwood Shores, California 94065 9 (650) 801-5040 10 sarajenkins@quinnemanuel.com 11 tracygao@quinnemanuel.com 12 13 14 Also Present: 15 Scott Slater, Videographer 16 17 18 19 20 21 22 23 24 25</p> <p>Page 4</p> |
| <p>1 APPEARANCES: 2 3 FOR THE PLAINTIFFS: 4 BOIES SCHILLER FLEXNER LLP 5 BY: JAMES LEE, ESQ. 6 100 SE Second Street, Suite 2800 7 Miami, Florida 33131 8 (305) 539-8400 9 jlee@bsflp.com 10 11 BY: HSIAO (MARK) C. MAO, ESQ. 12 44 Montgomery Street, 41st Floor 13 San Francisco, California 91401 14 (415) 293-6800 15 mmao@bsflp.com 16 17 MORGAN & MORGAN 18 BY: RYAN MCGEE, ESQ. 19 201 North Franklin Street, 7th Floor 20 Tampa, Florida 33602 21 (813) 223-5505 22 rmcgee@forthepeople.com 23 24 25</p> <p>Page 3</p> | <p>1 I N D E X 2 3 4 THURSDAY, JANUARY 13, 2022 5 6 WITNESS EXAMINATION 7 CHASOM BROWN 8 9 BY MS. JENKINS 11, 201 10 BY MR. LEE 195 11 12 13 14 15 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER: 16 Page Line 17 56 7 18 155 1 19 202 3 20 21 22 23 24 25</p> <p>Page 5</p> |

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| <p>1 that relate to this case and potentially the testimony 2 you might give today? 3 A No You don't have anything to worry about 4 Q Okay Do you have any documents with you in the 5 room today? 09:58:02 6 A I do I do have a few 7 Q Okay Can you tell me what those are? 8 A I have the -- the Complaint I don't know if 9 you need to see them 10 Q Is it the Second Amended Complaint, does it say 09:58:15 11 on the first page? 12 A It says Second Amended Complaint 13 Q Thank you 14 A The Incognito splash screen (indicating), 15 Privacy Policy (indicating) The Google Terms of Service 09:58:36 16 (indicating) 17 The only other document is Google Chrome Privacy 18 Notice (indicating) 19 Q BY MS JENKINS: Okay Thank you 20 I notice there's some highlighting on those 09:58:58 21 pages Do you have any notes written on any of those, 22 handwritten notes or anything in the margin? 23 A I have one note on one page 24 MS JENKINS: All right James, could you 25 please get a scan of highlighting and any notes on those 09:59:16 Page 14</p> | <p>1 MS. JENKINS: Sure. 2 Q. What I asked is what you did to prepare for your 3 deposition today, and as Mr. Lee pointed out, I'm not 4 asking about any communications you may have had with 5 your counsel. But if you met with counsel, you can tell 10:00:36 6 me when you met and who you met with. 7 A. Well, I printed out some documents, the 8 documents that I just showed you, and then outside of 9 that, I didn't prepare, except for speaking with my 10 lawyers, of course. 10:01:00 11 Q. Okay. And without telling me anything you 12 discussed, can you tell me when you met with your 13 lawyers? 14 A. Yesterday. 15 Q. And for about how long? 10:01:11 16 MR. LEE: You can answer. 17 THE WITNESS: A few hours. 18 Q. BY MS. JENKINS: Okay. Had you met with them 19 prior to yesterday to prepare for the deposition? 20 A. No. 10:01:24 21 Q. Did you meet with Mr. Lee? 22 A. Yes, I did. 23 Q. Were any of your other lawyers present? 24 A. Yes. Mark was there as well. 25 Q. Okay. Did you review -- in addition to the 10:01:43 Page 16</p> |
| <p>1 pages and send those over to us 2 MR LEE: Yep 3 MS JENKINS: Thank you 4 Q And do you have your phone with you there today? 5 A The phone, yeah, is in the room 09:59:28 6 Q And is it -- is it turned on or could you leave 7 it -- 8 A The phone itself is on, but the ringer is off 9 Q All right Thank you 10 What did you do to prepare for your deposition 09:59:48 11 today? 12 MR LEE: Hold on one second, given this is 13 Mr Brown, I believe, his first deposition 14 Mr Brown, when Google's attorney, when 15 Ms Jenkins asks you questions, you should not assume 09:59:57 16 anywhere in her questioning that she's trying to ask you 17 about any communications you may have had with your 18 lawyers So when you answer her questions, you should 19 only answer to the extent you can do so without revealing 20 any communications you've had with your attorneys 10:00:17 21 Does that make sense? 22 THE WITNESS: Yeah, I understand 23 MR LEE: Okay 24 Ms Jenkins, why don't you just ask the question 25 again with that in mind 10:00:26 Page 15</p> | <p>1 documents that you have in front of you there, did you 2 review any other documents? 3 MR. LEE: Hold on. Are you asking about 4 documents that refreshed his recollection? Otherwise, 5 it's privileged. 10:01:55 6 MS. JENKINS: Well, I was just asking if he 7 reviewed any others. I'm not asking what they are. 8 MR. LEE: Okay. You can answer that limited 9 question, Mr. Chasom, but I don't want you to identify 10 any additional documents. 10:02:06 11 THE WITNESS: Yes. 12 Q. BY MS. JENKINS: And of those documents, did any 13 of those documents refresh your recollection with respect 14 to the issues described in those documents? 15 A. No. 10:02:23 16 Q. Did you review any deposition transcripts from 17 this case? 18 A. No. 19 Q. Can you tell me, what is your current job? 20 A. It's a little complicated. I guess -- like I 10:02:40 21 guess I'm an entrepreneur, like I technically probably am 22 unemployed. So I own a few companies. 23 Q. Okay. And what companies are those? 24 A. Well, I have ownership interest in several, but 25 would you like me to name them? 10:03:03 Page 17</p> |

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| <p>1 Q. Sure, yeah.</p> <p>2 A. Well, I guess there's an over-arching company</p> <p>3 called Eppek, E-P-P-E-K, LLC. And that's actually</p> <p>4 generally where all the interest is in. So there's that</p> <p>5 one. And then I have a sole prop that is Chasom, just my 10:03:18</p> <p>6 first name.</p> <p>7 Q. Okay. And what type of business is Eppek LLC?</p> <p>8 A. It's a cannabis business. It's a transportation</p> <p>9 business. It is a real estate business. It is -- that</p> <p>10 probably is -- is good. I probably dabble in some other 10:03:47</p> <p>11 random things, but nothing --</p> <p>12 Q. Does --</p> <p>13 A. -- worth --</p> <p>14 Q. -- Eppek LLC have a website?</p> <p>15 A. No. 10:03:57</p> <p>16 Q. Do any of those services or -- or products that</p> <p>17 you just listed, do any of them have a website related to</p> <p>18 cannabis or travel?</p> <p>19 A. Well, I guess my sole prop does, which is my</p> <p>20 band, which is Chasom.com. 10:04:16</p> <p>21 Q. Okay. And what is the name of your band?</p> <p>22 A. Chasom, which is my first name.</p> <p>23 Q. Do you run that website?</p> <p>24 A. I -- I feel like I put -- I haven't seen it in a</p> <p>25 long time, to be honest, but I -- me and the guitar 10:04:35</p> <p style="text-align: right;">Page 18</p> | <p>1 A. At Golden West and Long Beach, Cal State Long</p> <p>2 Beach.</p> <p>3 Q. Were you studying for a specific degree?</p> <p>4 A. Business administration.</p> <p>5 Q. How did you get involved in this case? 10:06:25</p> <p>6 MR. LEE: Again, Mr. Brown, you can answer that</p> <p>7 question, but to the extent that -- only to the extent</p> <p>8 that it doesn't reveal any communications you've had with</p> <p>9 your counsel. Okay?</p> <p>10 THE WITNESS: (Nods head.) 10:06:42</p> <p>11 I -- I'd noticed some odd things that -- that I</p> <p>12 had questions about going on with my account and ads and</p> <p>13 things like that. And so then I inquired about, you</p> <p>14 know, talking to an expert in the field, and then that's</p> <p>15 how I got in touch with my lawyer. 10:07:04</p> <p>16 Q. BY MS. JENKINS: Okay. Can you describe the odd</p> <p>17 things that you just mentioned? What were those?</p> <p>18 A. It -- it just essentially had to do with the ads</p> <p>19 that were being served to me, and I got curious like how</p> <p>20 and where they were coming from. 10:07:30</p> <p>21 Q. Were these ads being served to you while you</p> <p>22 were browsing in Chrome Incognito mode?</p> <p>23 A. I don't really remember specifically if it was</p> <p>24 that or not. It was more just -- yeah, I don't really</p> <p>25 remember if it was specifically in the Incognito mode, 10:07:57</p> <p style="text-align: right;">Page 20</p> |
| <p>1 player in the band have added things to the website, yes.</p> <p>2 Q. And are you able to do that yourself</p> <p>3 technically, you have the know-how of how to change the</p> <p>4 website?</p> <p>5 A. If I use like a program like Wix, where it 10:04:52</p> <p>6 pretty much does it for you, then yeah, I could figure it</p> <p>7 out, but my -- that's why I have the guitar player do it</p> <p>8 because he has a bit more technical knowledge than I do</p> <p>9 on that.</p> <p>10 Q. When is the last time that you were employed by 10:05:10</p> <p>11 someone other than yourself?</p> <p>12 A. About a year and a half ago.</p> <p>13 Q. And can you tell me what that job was?</p> <p>14 A. That was with T-Mobile USA.</p> <p>15 Q. And what was your role there? 10:05:30</p> <p>16 A. I was a -- my title at the end was -- I was an</p> <p>17 account manager, and then they had changed my title to --</p> <p>18 I basically was an account manager at the time I was</p> <p>19 there.</p> <p>20 Q. And how long were you at T-Mobile? 10:05:49</p> <p>21 A. Like 13 years, 13-and-a-half years.</p> <p>22 Q. What's the highest level of education that</p> <p>23 you've completed?</p> <p>24 A. Some college.</p> <p>25 Q. And where did you go to college? 10:06:05</p> <p style="text-align: right;">Page 19</p> | <p>1 but there were -- it would be both, I guess</p> <p>2 MR. LEE: By the way, Mr. Brown, I just want you</p> <p>3 to know that -- I'm sure Ms. Jenkins agrees -- nobody</p> <p>4 wants you to guess. So if you recall something, then you</p> <p>5 can recall it, and if you don't recall something, that's 10:08:16</p> <p>6 perfectly fine. But we certainly don't want you to</p> <p>7 guess.</p> <p>8 THE WITNESS: Okay. So I'm not 100 percent</p> <p>9 clear if it was in Incognito mode or not.</p> <p>10 Q. BY MS. JENKINS: When -- when you said your -- 10:08:31</p> <p>11 when you were answering the questions earlier, you said</p> <p>12 both. By that did you mean it may have been in Incognito</p> <p>13 mode or it may have been in regular mode on Chrome; is</p> <p>14 that correct?</p> <p>15 A. Yes. 10:08:45</p> <p>16 Q. So I believe that you said, then, that you --</p> <p>17 you were looking for an expert about -- after noticing</p> <p>18 some odd things regarding advertising -- advertisements</p> <p>19 that you were seeing; is that correct?</p> <p>20 A. Yeah. 10:09:05</p> <p>21 Q. Okay. And so who did you reach out to when you</p> <p>22 were looking for an expert about that?</p> <p>23 A. It -- one of my business partners had known one</p> <p>24 of the experts in the lawyers, and so we were discussing</p> <p>25 it, and I guess he got us in contact. 10:09:25</p> <p style="text-align: right;">Page 21</p> |

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| <p>1 you, would that cause the same concern?</p> <p>2 MR. LEE: Objected -- objection to form to the</p> <p>3 extent that -- strike that.</p> <p>4 Objection to form, vague as to "anonymous."</p> <p>5 THE WITNESS: Yeah. Like I don't -- I don't -- 11:56:15</p> <p>6 I would have the same concern because I feel like my</p> <p>7 identifiers are me. I don't know how Google identifies</p> <p>8 me. I think -- I think my name is probably the last</p> <p>9 thing Google cares about me.</p> <p>10 So it's -- it's like equivalent to like, Sara, I 11:56:31</p> <p>11 just met you. We don't know each other. But I know</p> <p>12 you're wearing a black jacket, I know you're wearing a</p> <p>13 red shirt, I know you wear glasses, I know like the type</p> <p>14 of chair that you're looking at. Like I know a lot of</p> <p>15 things about you. I could probably figure out where 11:56:51</p> <p>16 you're located.</p> <p>17 And so just maybe if I didn't know your first</p> <p>18 name, that -- it's almost irrelevant. I now know a lot</p> <p>19 about you, probably more than you would prefer me knowing</p> <p>20 about you. 11:57:00</p> <p>21 And especially if you clicked on the button and</p> <p>22 you muted your mic, but now I can hear everything you're</p> <p>23 saying. But you clicked on the button. You muted the</p> <p>24 mic. But I can hear everything you're saying? That's</p> <p>25 something inherently wrong with that. 11:57:12</p> <p style="text-align: right;">Page 70</p> | <p>1 MR. MAO: Let me jump on and say that you're on</p> <p>2 mute Just tell him to pause</p> <p>3 Excuse me Hey, sorry, like there's something</p> <p>4 wrong with the connection Can we take a break real</p> <p>5 fast? Just two minutes I think James' screen is 11:58:49</p> <p>6 frozen, Sara</p> <p>7 MS JENKINS: Oh, okay Sure Yeah, I hadn't</p> <p>8 noticed Sorry</p> <p>9 MR. MAO: Sara, you're actually -- I actually</p> <p>10 can't hear you I can't hear Chasom, either 11:59:03</p> <p>11 THE WITNESS: Oh, really? Okay</p> <p>12 THE REPORTER: Shall we go off the record?</p> <p>13 MR. MCGEE: Yeah, this is Ryan Why don't we go</p> <p>14 off the record</p> <p>15 MS JENKINS: Sure 11:59:16</p> <p>16 THE VIDEOGRAPHER: We are off the record The</p> <p>17 time is 11:59 a m</p> <p>18 (Discussion off the record)</p> <p>19 (Recess)</p> <p>20 THE VIDEOGRAPHER: We are back on the record 12:05:42</p> <p>21 The time is 12:06 p m</p> <p>22 Q BY MS JENKINS: All right Mr Brown, if</p> <p>23 Google has your browsing activity from one Incognito</p> <p>24 session and it also has browsing activity from a second</p> <p>25 different Incognito session, but Google doesn't know that 12:06:04</p> <p style="text-align: right;">Page 72</p> |
| <p>1 Q. BY MS. JENKINS: Well, in that way with your</p> <p>2 explanation of it, that would not be anonymous in that</p> <p>3 you would still know it was me talking. I'm rather</p> <p>4 talking about if Google knows that some user is in a</p> <p>5 specific location, but doesn't know what user it is and 11:57:28</p> <p>6 cannot connect that location back to you as a person,</p> <p>7 does that cause the same concern?</p> <p>8 MR. LEE: Objection. Asked and answered.</p> <p>9 THE WITNESS: Yes, that causes the same concern.</p> <p>10 Because they know a myriad of things about me that I 11:57:42</p> <p>11 specifically asked them to not know right now. And --</p> <p>12 and, yeah, so it does cause the same concern.</p> <p>13 Q. BY MS. JENKINS: Do you know whether the</p> <p>14 information that Google receives affects your browsing</p> <p>15 experience? 11:58:00</p> <p>16 MR. LEE: Objection to form, vague.</p> <p>17 THE WITNESS: I believe it has an effect. To</p> <p>18 what degree, I don't know. I could probably speculate,</p> <p>19 but I'm sure you don't want that.</p> <p>20 Q. BY MS. JENKINS: No, I don't want you to 11:58:18</p> <p>21 speculate, but if you -- if you have any idea that</p> <p>22 wouldn't be speculation.</p> <p>23 A. Well, tailored advertisements. I'm sure that's</p> <p>24 something that -- that would happen.</p> <p>25 Q. Okay. Anything else that you can think of? 11:58:31</p> <p style="text-align: right;">Page 71</p> | <p>1 they come from the same person, would that still cause</p> <p>2 you concern?</p> <p>3 MR. LEE: Objection to form, vague as to</p> <p>4 "person "</p> <p>5 THE WITNESS: Yes, that would cause me concern 12:06:22</p> <p>6 Q BY MS JENKINS: And why is that?</p> <p>7 A Because you did -- you collected my data without</p> <p>8 my consent, and now you're saying it, hey, we did it</p> <p>9 twice But it's like you -- you -- you stole from me</p> <p>10 once, and then you stole from me again, and then you're 12:06:47</p> <p>11 saying, hey, we just don't keep it in the same place</p> <p>12 Are you cool with that? No, I'm not cool with that</p> <p>13 Q Do you have an understanding of whether Google</p> <p>14 profits from user data?</p> <p>15 A I -- I believe they do -- 12:07:09</p> <p>16 Q And what's your understanding of how --</p> <p>17 A -- a lot I believe they do a lot</p> <p>18 Q And what's your understanding of how Google</p> <p>19 profits from user data?</p> <p>20 A Well, data can be monetized in an assortment of 12:07:16</p> <p>21 ways One of those ways is putting profiles together</p> <p>22 and -- you know, to advertisers to, hey, here's your type</p> <p>23 of customer It's this guy He's in the cannabis</p> <p>24 history He's 43 years old He likes these certain</p> <p>25 things And then they -- there's certain things that 12:07:47</p> <p style="text-align: right;">Page 73</p> |

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|---|--|
| <p>1 advertisers want, and Google provides that to them, and I</p> <p>2 think a transaction occurs and there's probably a lot of</p> <p>3 money that exchanges hands</p> <p>4 And just -- just to be fair, I -- I -- for</p> <p>5 business, I have used Google like AdSense before and 12:08:06</p> <p>6 things like that for targeted ads And so there's a lot</p> <p>7 of different things you could click, and you could</p> <p>8 like -- you could pick exactly who you're going to</p> <p>9 target, so</p> <p>10 Q For -- for what business have you used AdSense? 12:08:23</p> <p>11 A Oh, this is going to be funny I -- me and a</p> <p>12 buddy of mine, we started a puppet show online on</p> <p>13 YouTube, and we were advertising that -- it wasn't a</p> <p>14 puppet show It was reviewed movies, basically, but with</p> <p>15 puppets 12:08:48</p> <p>16 And so we wanted to advertise to certain people</p> <p>17 People that liked movies, people that were in our area,</p> <p>18 people like that, that type of stuff</p> <p>19 Q Is this one of the -- the businesses that you're</p> <p>20 running under the LLC you mentioned earlier? 12:09:03</p> <p>21 A That -- that would have been under my sole prop,</p> <p>22 I believe, when I did that Because that's more along</p> <p>23 the lines of entertainment It was just kind of just a</p> <p>24 fun little project between me and my buddy, but we did,</p> <p>25 you know, put some time into it 12:09:24</p> <p style="text-align: right;">Page 74</p> | <p>1 A. Like, for example, something newer coming out</p> <p>2 is -- you know, data's being collected from people's</p> <p>3 driving habits, and then that's -- like insurance</p> <p>4 companies are paying to get that information. So that</p> <p>5 would be another example. 12:11:24</p> <p>6 Q. Okay. You're not aware if Google is doing</p> <p>7 anything with that -- to that respect, are you?</p> <p>8 A. No, I'm not aware of that.</p> <p>9 Q. And are there any other ways that you know of</p> <p>10 monetizing user data that you can think of? 12:11:41</p> <p>11 A. There's -- yeah, there's probably a lot of ways.</p> <p>12 Give me a moment to think about it, and I'll try to -- I</p> <p>13 think many, many companies would be very curious about,</p> <p>14 you know, habits of people and -- and they would pay for</p> <p>15 that as well. So not necessarily advertising, but the 12:12:11</p> <p>16 general habits of people, and I would think Google is</p> <p>17 doing that.</p> <p>18 Q. Okay. Anything else?</p> <p>19 A. Yeah, like you can -- like a lot of like bulk</p> <p>20 data collection. Like I guess that would lean more 12:12:41</p> <p>21 toward -- toward companies wanting information, but it</p> <p>22 could be companies, individuals, like -- yeah, I -- I</p> <p>23 don't deal in that world so I don't know specifics, and</p> <p>24 I'm trying not to like, oh, guess does Google do this or</p> <p>25 guess does Google do that. I don't know. My guess is 12:13:02</p> <p style="text-align: right;">Page 76</p> |
| <p>1 Q. Did you use AdSense to increase views on your</p> <p>2 videos?</p> <p>3 A. Yes. Yes.</p> <p>4 Q. And -- and did the -- did that advertising</p> <p>5 effort have any results? 12:09:39</p> <p>6 A. It did. We did get more views and more</p> <p>7 subscribers from it.</p> <p>8 Q. Were you happy with that experience?</p> <p>9 A. Lukewarm. I don't know if I'd do it again, but</p> <p>10 I don't -- I don't regret it. It was a puppet show. So, 12:10:00</p> <p>11 you know, like conversations about puppet shows, Sara.</p> <p>12 Q. Is it fair to say that Google AdSense did what</p> <p>13 you wanted it to do in that it increased views and</p> <p>14 subscribership?</p> <p>15 A. I think that's a fair thing to say. 12:10:22</p> <p>16 Q. Other than advertising, do you have an</p> <p>17 understanding of any other ways that Google profits from</p> <p>18 user data?</p> <p>19 A. Not to any depth, but there's a lot of ways that</p> <p>20 data can be used to be monetized. I don't know which 12:10:47</p> <p>21 ones Google uses the most or anything like that. I can</p> <p>22 imagine they -- because they have so much data, they</p> <p>23 probably use it in every way possible.</p> <p>24 Q. Okay. And what other ways to monetize data are</p> <p>25 you aware of? 12:11:07</p> <p style="text-align: right;">Page 75</p> | <p>1 they do it all</p> <p>2 Q Yeah My question was not specific to Google,</p> <p>3 but just generally ways that user data might be</p> <p>4 monetized, but --</p> <p>5 A Oh 12:13:14</p> <p>6 Q Are there any other ways that you can think of?</p> <p>7 A Yeah You can check effectiveness of like</p> <p>8 things that you're doing Like, for example, there's one</p> <p>9 way I use data is we send out an email, and then we find</p> <p>10 out how many people click on that email And then we 12:13:42</p> <p>11 analyze the different forms of like, oh, hey, this email,</p> <p>12 more people will click on it when we put this or we do</p> <p>13 that</p> <p>14 And so we -- to find the effectiveness of</p> <p>15 practices is one way that it can be monetized 12:13:59</p> <p>16 Q For -- for what company or endeavor have you</p> <p>17 done that -- that sort of practice with regard to email?</p> <p>18 A It was in my cannabis company</p> <p>19 Q What is your cannabis company?</p> <p>20 A Well, it's all -- it's a series of a bunch of 12:14:19</p> <p>21 it, but the ownership company is Eppek LLC</p> <p>22 Q And what are the companies, the cannabis</p> <p>23 companies then under Eppek?</p> <p>24 A One of them is called Maturin (phonetic), one of</p> <p>25 them is called Connick, one of them is called Elemental 12:14:38</p> <p style="text-align: right;">Page 77</p> |

| | |
|--|--|
| <p>1 Holistic. There's like some other LLCs that we use for 2 random things that -- off the top of my head, I don't 3 really know. I don't really deal with them or write 4 checks for them very often, but there's LLCs that Eppek 5 would own. 12:15:05</p> <p>6 Q. And what types of companies are those?</p> <p>7 A. Well, either in like -- well, in cannabis, or 8 they would be -- yeah, they would be cannabis companies.</p> <p>9 Q. When you say cannabis companies, I'm wondering, 10 do you mean they sell cannabis or -- I'm just not sure 12:15:26 11 what you mean by you hold it.</p> <p>12 MR. LEE: Okay, hold on for a second. Hold on 13 for a second, Sara.</p> <p>14 I'm actually not sure, either, Sara. How do you 15 think this line of questioning is going to lead to 12:15:35 16 relevant testimony? I've let you get into it, but we 17 keep going further down into this, and I see no -- no way 18 any of this is relevant.</p> <p>19 MS. JENKINS: Well, I think I'm allowed to delve 20 into his background a little bit. I haven't gone very 12:15:49 21 far. He's talking about user data with respect to emails 22 from some of these companies. I'm asking what the 23 companies are and what they do, so...</p> <p>24 MR. LEE: You seem particularly focused on the 25 cannabis companies. That's -- that's all I'm saying. 12:16:06 Page 78</p> | <p>1 world. So if you're curious about manufacturing licenses 2 that cannabis. So what you do is you pull -- basically, 3 you get the plant, and then you pull it into the lab, and 4 then what happens is you are extracting the terpene 5 profile from it. So through all the machinery. 12:17:54</p> <p>6 Now, hey, I do -- am part owner of the lab, but 7 I don't know the chemistry behind it all, but I can tell 8 you what the machine does, is you then extract the THC 9 and you -- in the form of distillate, and then you 10 extract the terpene profiles. 12:18:11</p> <p>11 And then you can make -- like you've probably 12 seen people generally have like a -- a vape, like or a 13 vape cartridge. And who knows? You may partake 14 yourself, Sara, in vapes.</p> <p>15 And so if you want to get essentially high off 12:18:24 16 THC, then you can -- you'll have a vape in distillate 17 form, and through a -- and before we get it to you, it 18 would, of course, be tested, all licensed, and then sold 19 through another licensed retailer. So then you can have 20 a clean, pure, unobstructed hit of THC, essentially. 12:18:44</p> <p>21 Q. And are you involved in the day-to-day 22 operations of these companies?</p> <p>23 A. No.</p> <p>24 Q. So are you involved as an investor?</p> <p>25 A. I'm involved as, you know, an investor, an 12:19:04 Page 80</p> |
| <p>1 MS. JENKINS: I've also asked about the puppet 2 show company. I'm happy to ask about the other companies 3 he has as well. I'm interested in -- in these companies, 4 the technology that they use, and his understanding of 5 the technology through these companies. 12:16:21</p> <p>6 So if you want to instruct him not to answer 7 what types of cannabis companies he's involved in, go 8 ahead.</p> <p>9 MR. LEE: I'm not instructing him not to answer. 10 I'm just trying to understand. I guess I'll just make my 12:16:32 11 objections. It's certainly your time, but I guess you 12 can choose how to use it.</p> <p>13 Go ahead.</p> <p>14 THE WITNESS: It's a licensed retail cannabis 15 company. 12:16:49</p> <p>16 Q. BY MS. JENKINS: And is that what all of those 17 different cannabis companies that you mentioned are?</p> <p>18 A. One of them owns some real estate, and that 19 houses a cannabis -- a cannabis company in it. And what 20 was the other one? And the company in it is a licensed 12:17:09 21 manufacturing lab. So that would be the extent.</p> <p>22 Q. Okay. What does a licensed -- licensed 23 manufacturing lab, does that mean they're licensed for 24 producing cannabis?</p> <p>25 A. Oh, yeah. Okay. Now we're getting into my 12:17:32 Page 79</p> | <p>1 advisor. Like I know a lot about the industry and -- but 2 like am I the manager of the location? No, we have a 3 manager of the locations, and they kind of run all the 4 day-to-day. But basically when they screw up, then I get 5 on them and get them back on -- on track. 12:19:26</p> <p>6 Q. Okay. Are you aware that you can enable block 7 all cookies in the Chrome browser?</p> <p>8 A. Block all cookies in the Chrome browser. I'm 9 not aware of that, but I'm sure -- I'm sure it's in the 10 realm of possibilities. 12:19:46</p> <p>11 Q. Did you know that you could enable block 12 third-party cookies in Chrome settings?</p> <p>13 A. I'm -- I'm sure I've seen something that says 14 that.</p> <p>15 Q. Do you know if you've done that? 12:20:02</p> <p>16 A. I don't even exactly know what that is. So if 17 you're blocking third-party cookies from another website, 18 I assume. I don't really know how that works.</p> <p>19 Q. Okay. Do you know that you can enable clear 20 cookies and site data when you close all windows in 12:20:22 21 Chrome settings?</p> <p>22 A. So I know you can clear cookies, and I think 23 I've done that before, only because something wasn't 24 working and somebody told me to clear cookies, and so I 25 cleared the cookies, and then it started working. 12:20:39 Page 81</p> |

| | |
|--|---|
| <p>1 has; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. And on what basis has your understanding of the</p> <p>4 way that Incognito works changed?</p> <p>5 MR. LEE: And now I'm going to ask you to not 17:19:44</p> <p>6 answer that question because it's based on</p> <p>7 attorney-client privilege.</p> <p>8 MS. JENKINS: James, you're the one who brought</p> <p>9 this up; right? You're the one who asked the question.</p> <p>10 MR. LEE: I asked has it changed. You're asking 17:19:58</p> <p>11 for the bases. Those are two different things.</p> <p>12 Q. BY MS. JENKINS: All right. Mr. Brown, will you</p> <p>13 adhere to your counsel's instruction?</p> <p>14 A. Yes.</p> <p>15 MS. JENKINS: All right. Then I have no further 17:20:10</p> <p>16 questions.</p> <p>17 MR. LEE: Thanks, everyone. We'll take the</p> <p>18 rough. We'll take the rough copy, please.</p> <p>19 THE REPORTER: Fine. Thank you. Can we go off</p> <p>20 the record? 17:20:25</p> <p>21 THE VIDEOGRAPHER: We are off the record. The</p> <p>22 time is 5:20 p.m. on January 13th, 2022.</p> <p>23 This concludes today's testimony given by</p> <p>24 Chasom Brown. The total number of media units used was</p> <p>25 eight and will be retained by Veritext Legal Solutions. 17:20:38 Page 202</p> | <p>1 I declare under the penalty of perjury under the</p> <p>2 laws of the State of California that the foregoing is</p> <p>3 true and correct.</p> <p>4 Executed on _____, 2022, at</p> <p>5 _____.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 SIGNATURE OF THE WITNESS</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 204</p> |
| <p>1 (Time noted: 5:20 p.m. Pacific Standard Time.)</p> <p>2 --oOo--</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 203</p> | <p>1 STATE OF CALIFORNIA) ss:</p> <p>2 COUNTY OF MARIN)</p> <p>3</p> <p>4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do</p> <p>5 hereby certify:</p> <p>6 That the foregoing deposition testimony was</p> <p>7 taken before me at the time and place therein set forth</p> <p>8 and at which time the witness was administered the oath;</p> <p>9 That testimony of the witness and all objections</p> <p>10 made by counsel at the time of the examination were</p> <p>11 recorded stenographically by me, and were thereafter</p> <p>12 transcribed under my direction and supervision, and that</p> <p>13 the foregoing pages contain a full, true and accurate</p> <p>14 record of all proceedings and testimony to the best of my</p> <p>15 skill and ability.</p> <p>16 I further certify that I am neither counsel for</p> <p>17 any party to said action, nor am I related to any party</p> <p>18 to said action, nor am I in any way interested in the</p> <p>19 outcome thereof.</p> <p>20 IN WITNESS WHEREOF, I have subscribed my name</p> <p>21 this 17th day of January, 2022.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 205</p> |

EXHIBIT C

Message

From: chrome-leads@google.com [chrome-leads@google.com]
on behalf of Sean Harvey [sharvey@google.com]
Sent: 2/2/2009 3:47:30 PM
To: Welmer Van Der Wel [wvanderwel@google.com]
CC: Sundar Pichai [sundar@google.com]; Linus Upson [linus@google.com]; Caesar Sengupta [caesars@google.com]; Mike Belshe [mbelshe@google.com]; Ian Fette [ifette@google.com]; Barbara Stanley [bstanley@google.com]; xfp-leads [xfp-leads@google.com]; Joerg Heilig [jh@google.com]; Jonathan Bellack [jbellack@google.com]; chrome-leads [chrome-leads@google.com]; Jim Roskind [jar@google.com]
Subject: [chrome-leads] Re: [xfp-leads] Re: IE8 "inprivate filtering" is not a part of a "porn mode" and may be an attack on Google ads or analytics

totally aware that this is a big problem. still working to get formal messaging out on this.

On Mon, Feb 2, 2009 at 10:42 AM, Welmer Van Der Wel <wvanderwel@google.com> wrote:
It would help greatly if we could get a formal statement from Google. Many DFP clients are asking about this and we keep telling them that we have not had a chance to fully test the impact.

On Sun, Feb 1, 2009 at 9:52 AM, Sundar Pichai <sundar@google.com> wrote:
Thanks, we are following this and responding, pls dont discuss more in this thread. Thanks

On Sun, Feb 1, 2009 at 8:30 AM, Linus Upson <linus@google.com> wrote:
[+sundar,chrome-leads]

I believe Sundar is involved in Google's response. It may not be something suitable for email.

Linus

On Sat, Jan 31, 2009 at 8:07 PM, Jim Roskind <jar@google.com> wrote:
I have not investigated personally, but I was told by my colleague that this filter feature is separate from the "inprivate mode," which some refer to as a "porn mode." You can read about Inprivate Filtering (formerly Inprivate Blocking) as distinct from Inprivate Browsing (a.k.a., Inprivate Mode a.k.a., porn mode) at:

http://www.efluxmedia.com/news_Internet_Explorer_8_RC1_Released_33967.html

Quoting from that article: "Along with the InPrivate Filter, another sought-after feature that was first implemented in IE 8 Beta 2 is an updated version of InPrivate Browsing, similar to Google Chrome's Incognito window." That sure makes it sound like these features are distinct.

I was told that in one IE 8 beta the FILTER was on by default, but now it is off by default. I was told that the real problem is that it has become progressively easier to "turn on" the filter. I was told the a pop-up dialog is something kindred to "Would you like IE to protect your privacy and prevent third parties from sharing information about you?".

I strongly suspect that confusion between the mode and the filter is reducing push-back (as per Mike's comment). My subject line was meant to help illuminate the confusion (and I'm hoping I'm not the confused person).

I was also told that parts of MS (where they sell ads) are not as pleased about this feature, but perchance MS is in a better position to deploy the "work-arounds."

On Sat, Jan 31, 2009 at 6:46 PM, Mike Belshe <mbelshe@google.com> wrote:

This has come up a number of times and does appear to be a significant threat to google, google's partners, and all advertising on the web. I don't know what the official google response is; except that since it is only in the "inprivate" mode, it is less of a threat.

A more adventurous jump would be for Microsoft to simply bundle an adblocker in IE by default. They haven't done that yet, but if I were them, it would be on the radar.

On Sat, Jan 31, 2009 at 3:41 PM, Jim Roskind <jar@google.com> wrote:

Sorry If Already Known:

A friend of mine at AOL called today to chat with me about the new "inprivate filtering" in IE 8. Apparently it is making his life hard, as it is seemingly targeted at harming providers of advertisements.

To review what he told me (which matches the high level blurbs I found on the net): "Inprivate filtering" adaptively blacklists domains that are found to provide sub-resource content to ten or more separate sites. They purport to do this to prevent these blacklisted sites from tracking user surfing actions. It is interesting that this filtering doesn't actually check to see if cookies etc. are being set. In the extreme, if a company with many subdomains hosts a trademark GIF file on a central domain, that central domain may get blacklisted (even if the content it serves is cachable, and no cookies are set etc.).

My friend told me that when he surfed around with IE 8, after a few hours, a number of Google sites were at the top of the blacklist (with a bunch of AOL sites next on the list).

He also told me that the algorithm was pretty stupid, and probably could be avoided, but it was going to be a hassle (at least for him, at AOL) to change the domains and/or paths in all their deployed ads.

I was wondering if we were actively tracking this (mis)feature, and its potential impact on google served (or tracked) advertisements?

Thanks,

p.s., It is rather interesting that the new adaptive DNS pre-resolution for sub-resources in Chrome tries to accelerate access to these subresources, which are being blocked by IE 8.

--

Sundar Pichai
GoogleInc.

Voice: 650-253-6341
Email: sundar@google.com

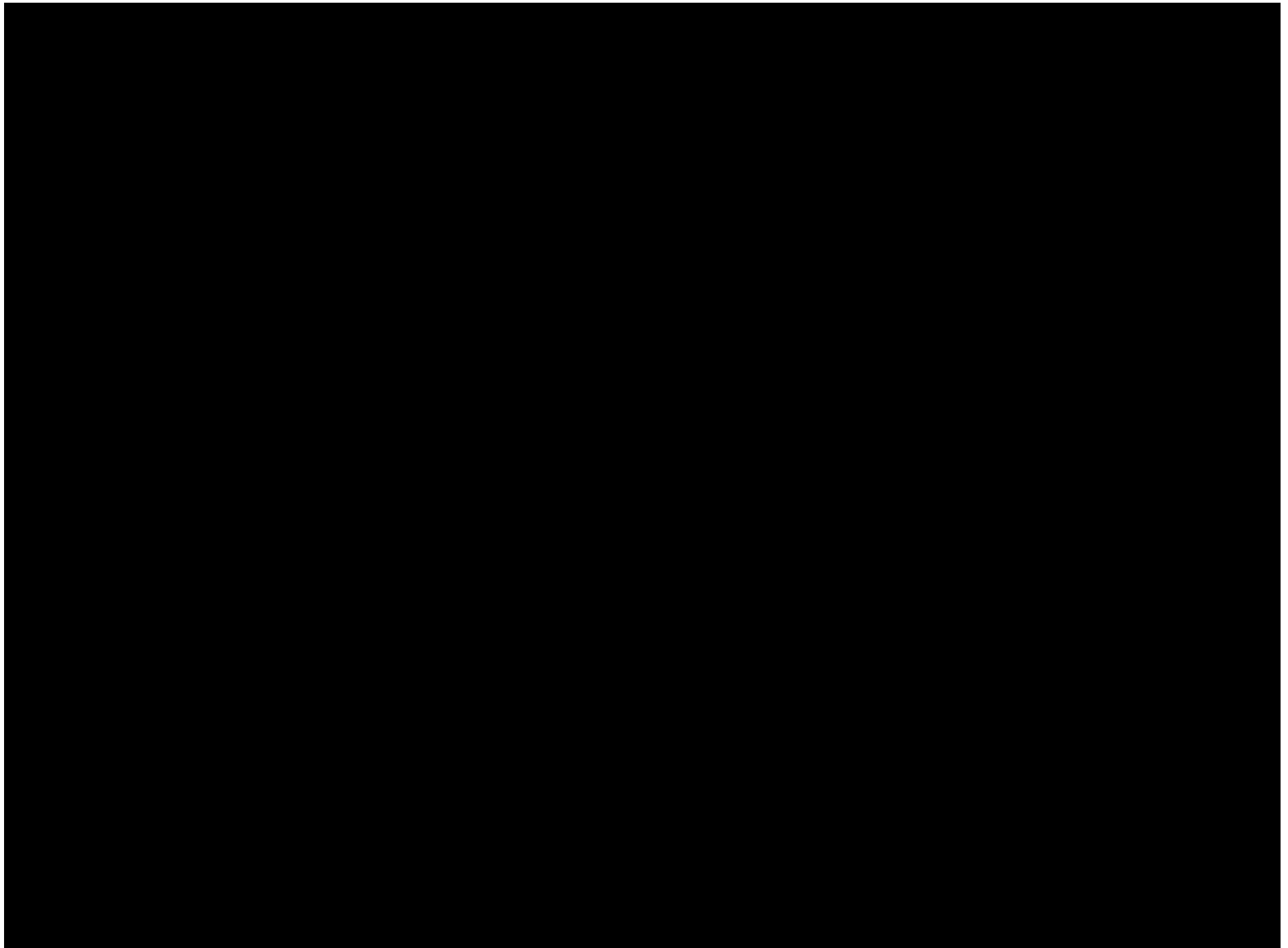
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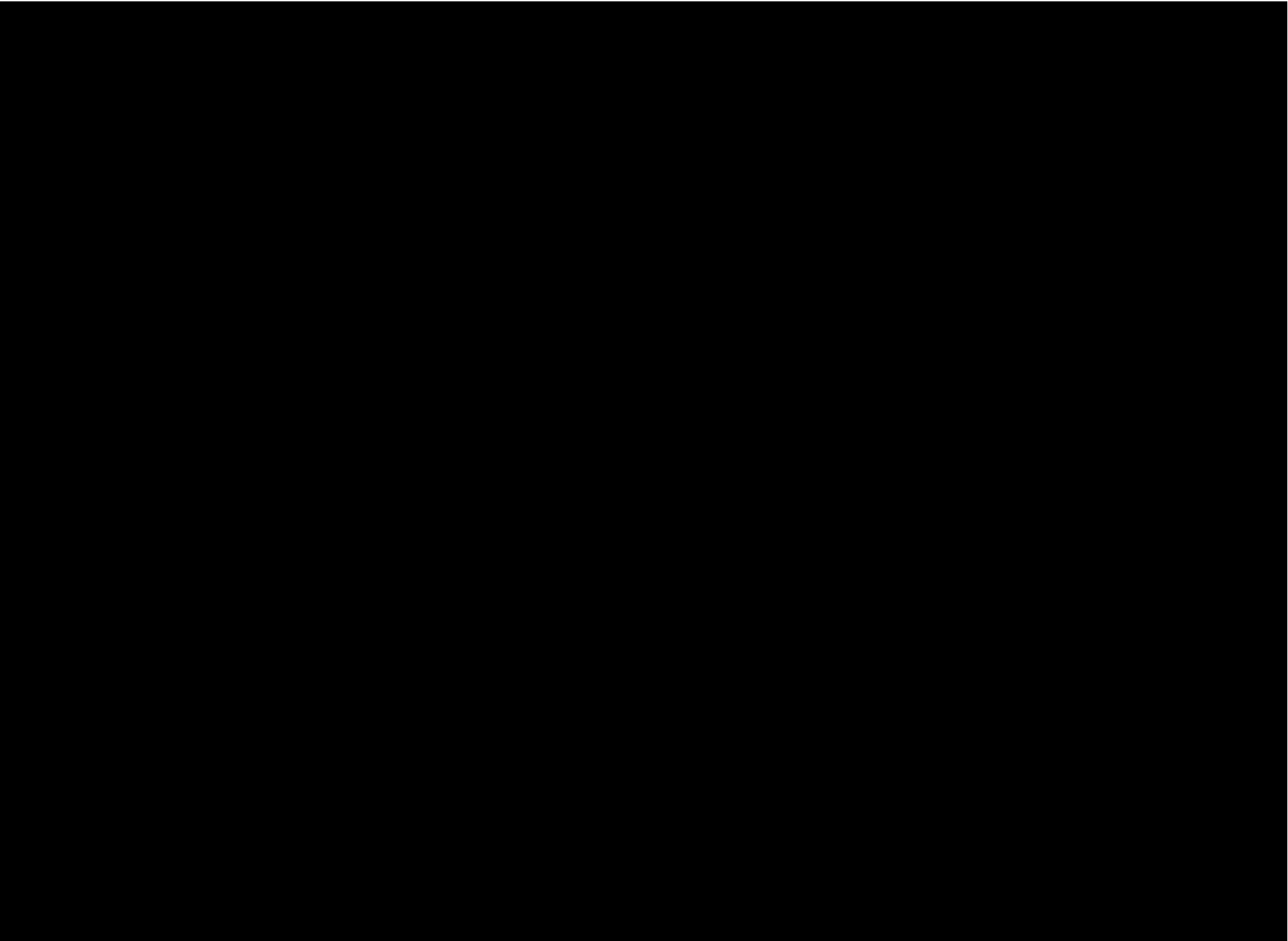
wwanderwel@google.com

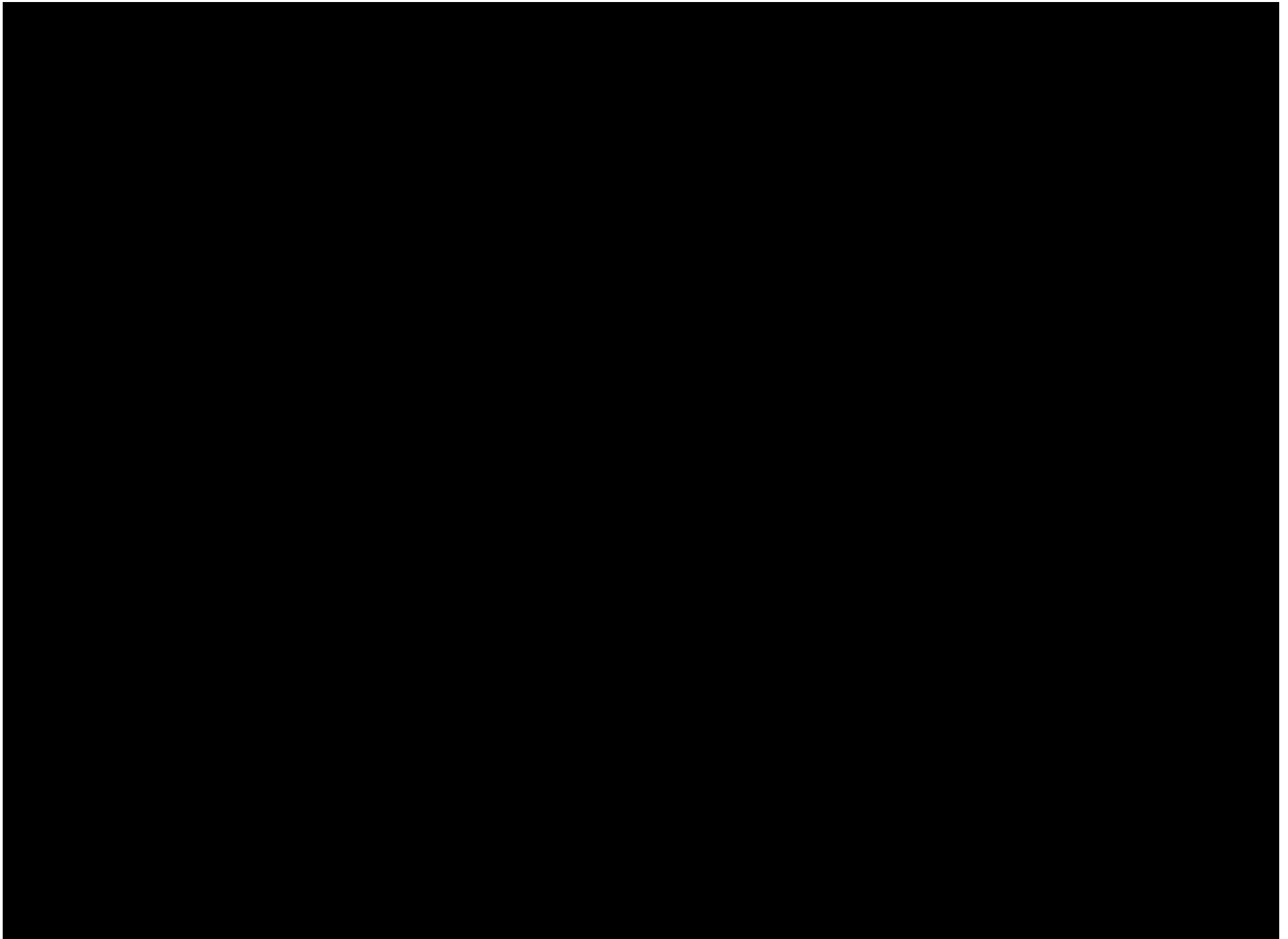
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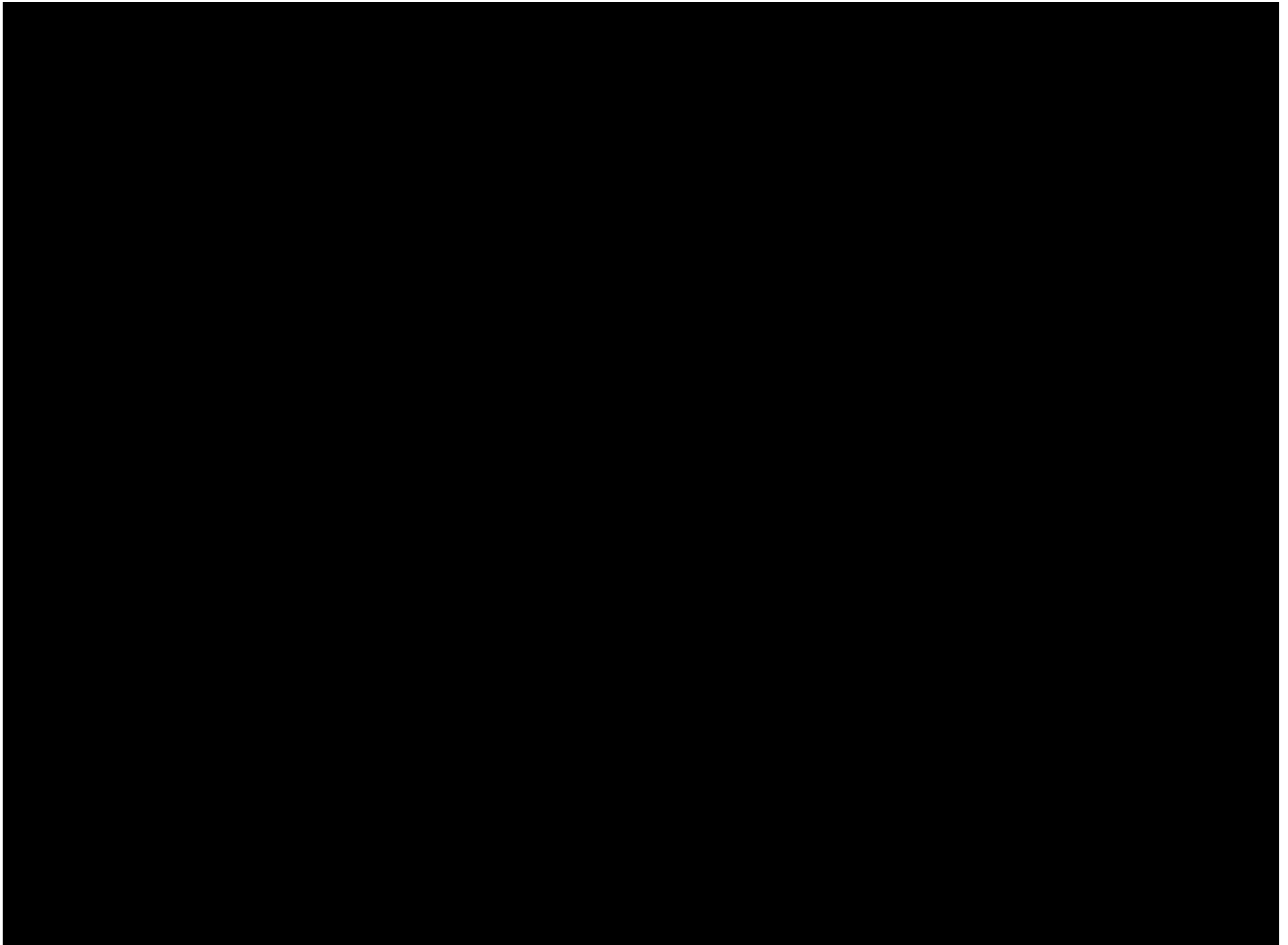
Sean Harvey
Product Manager
Google Content Network & Platform Ad Serving
212-381-5330
sharvey@google.com

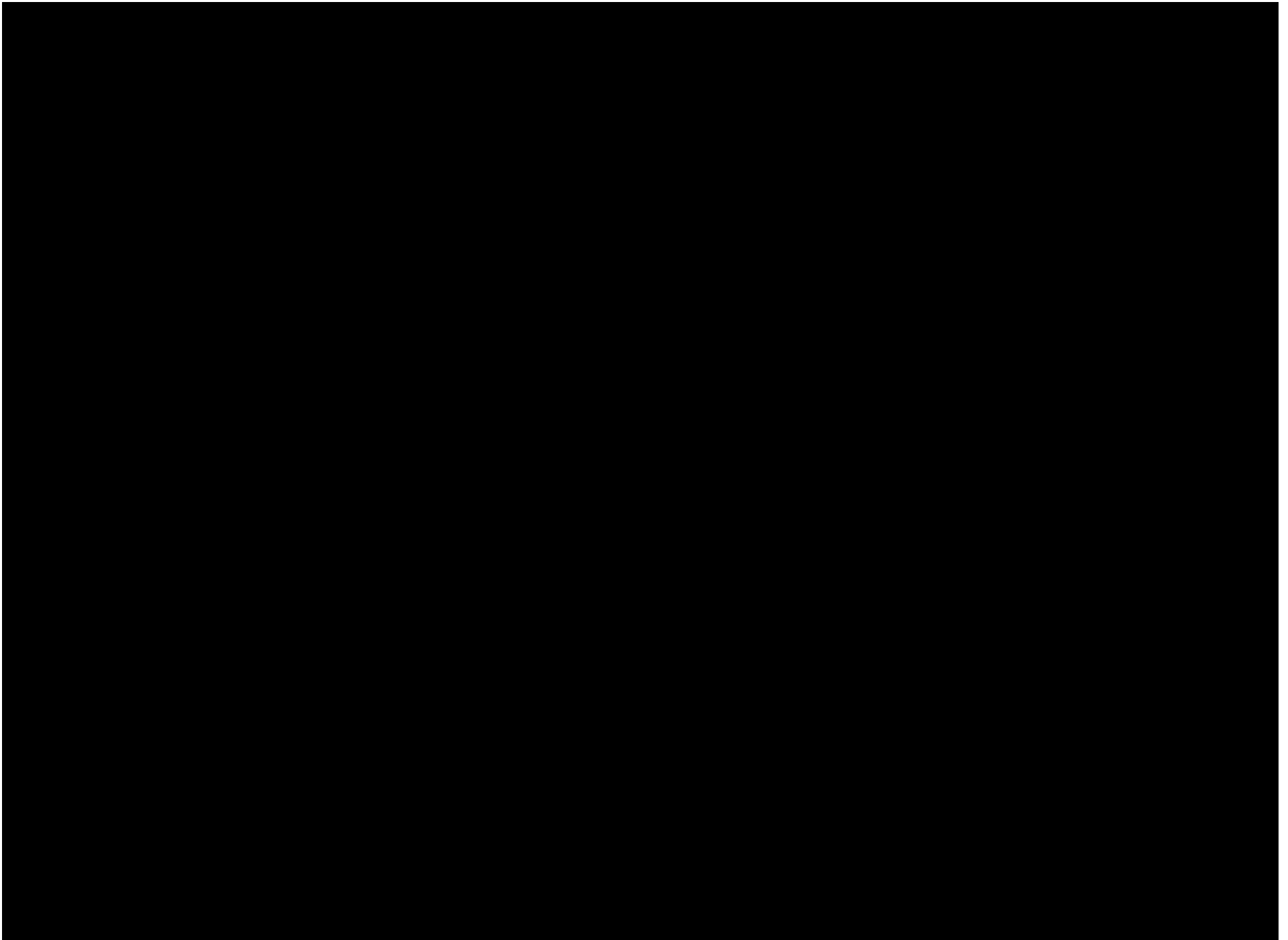
EXHIBIT D

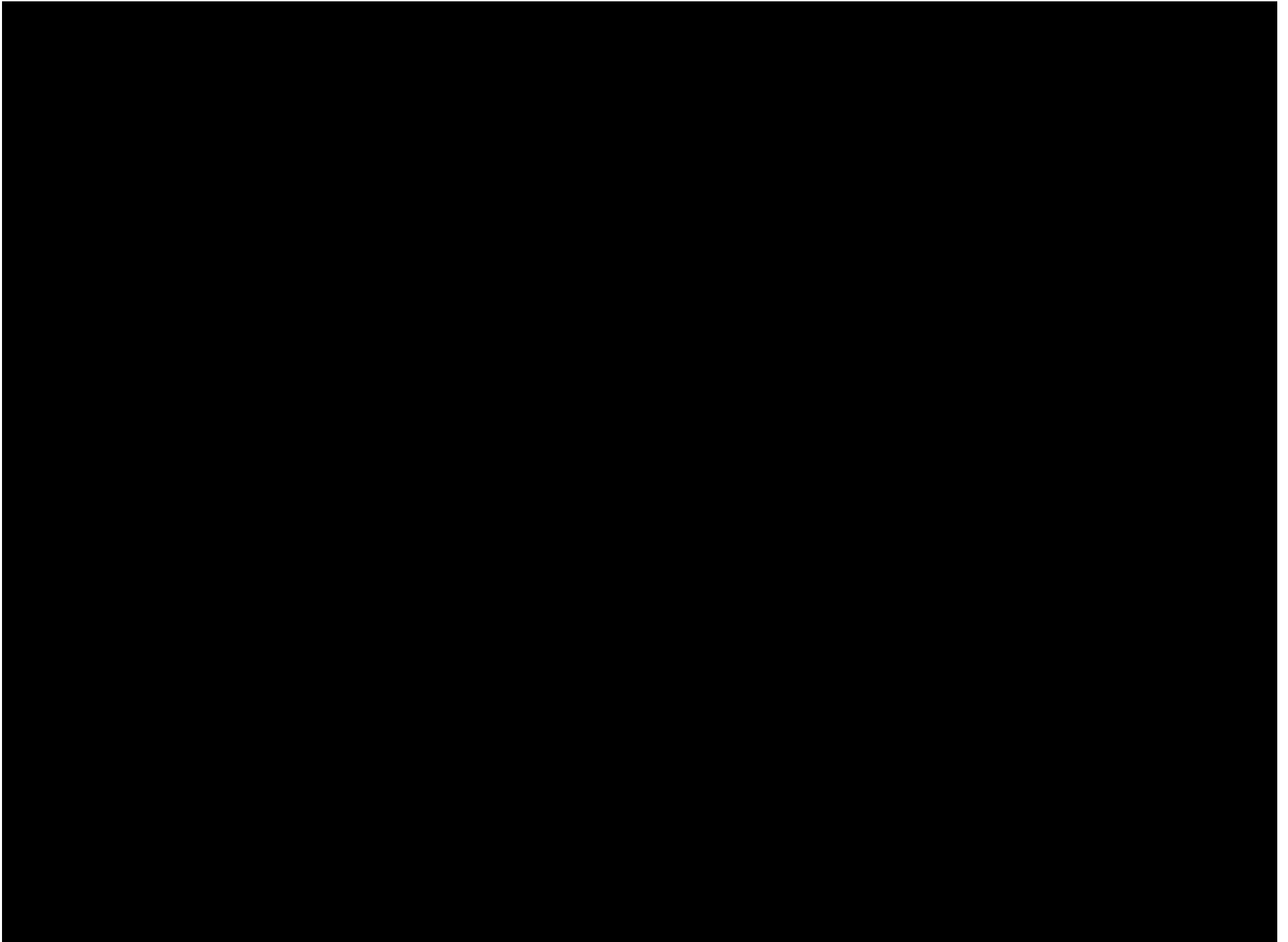


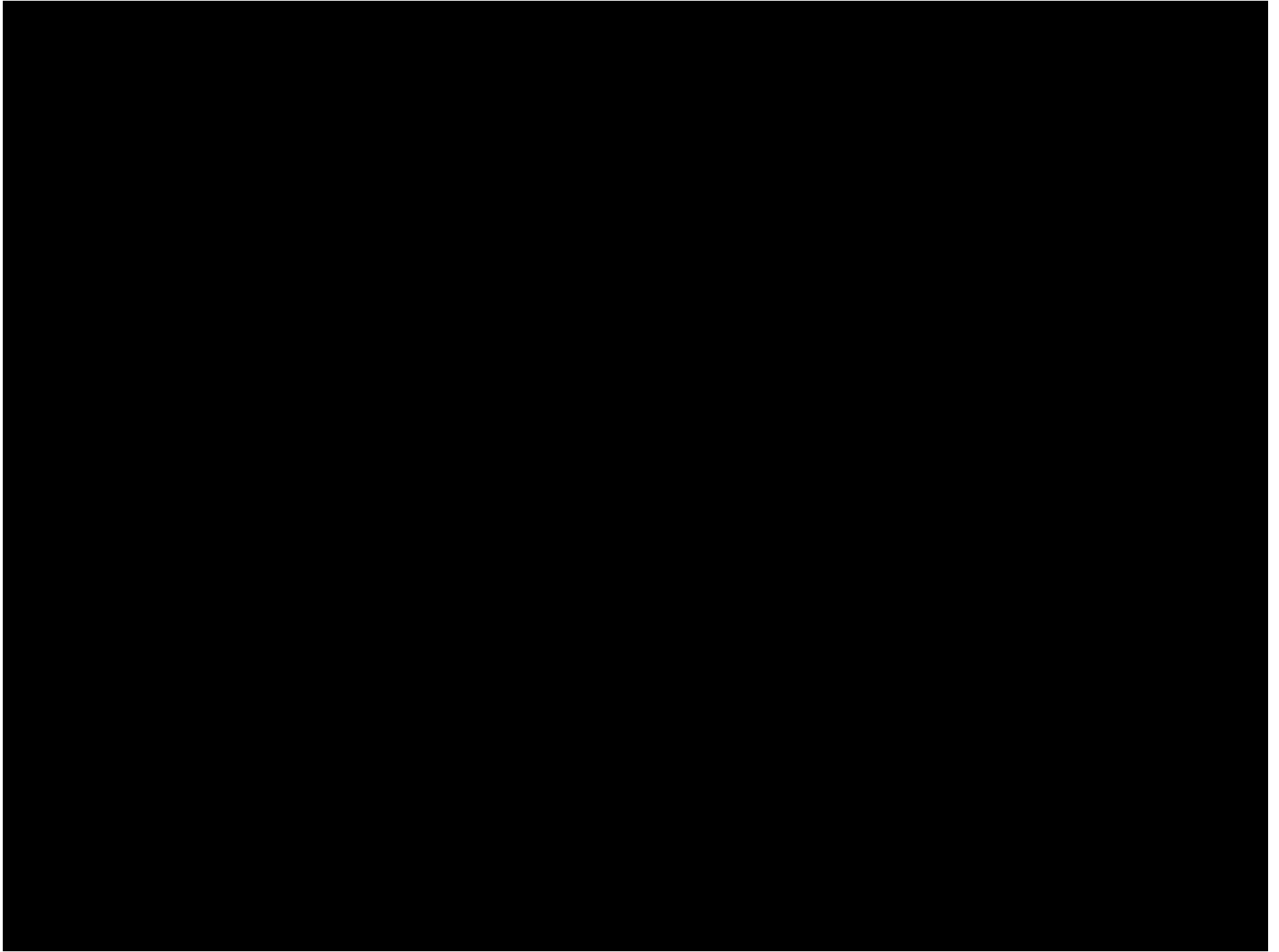


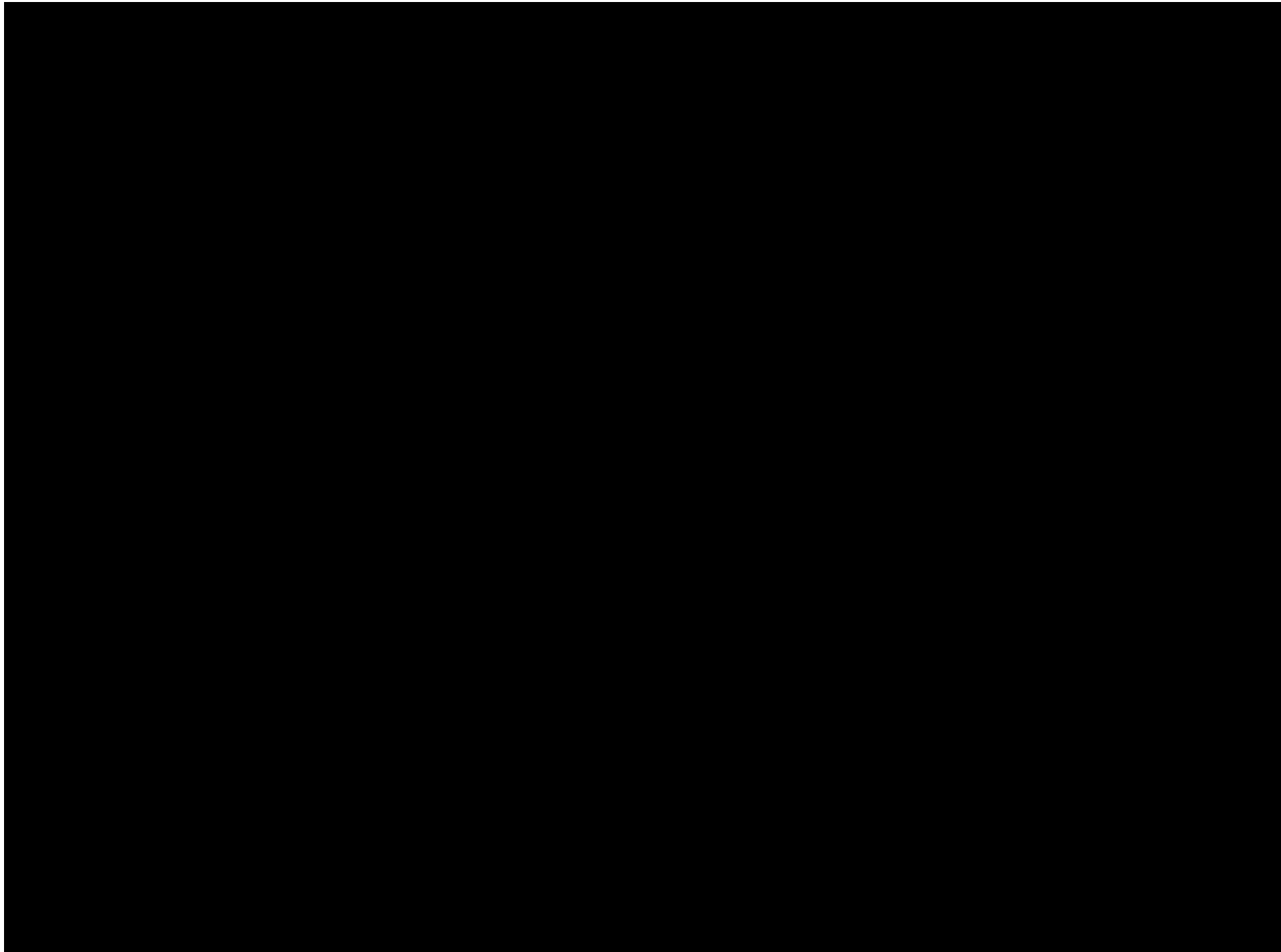


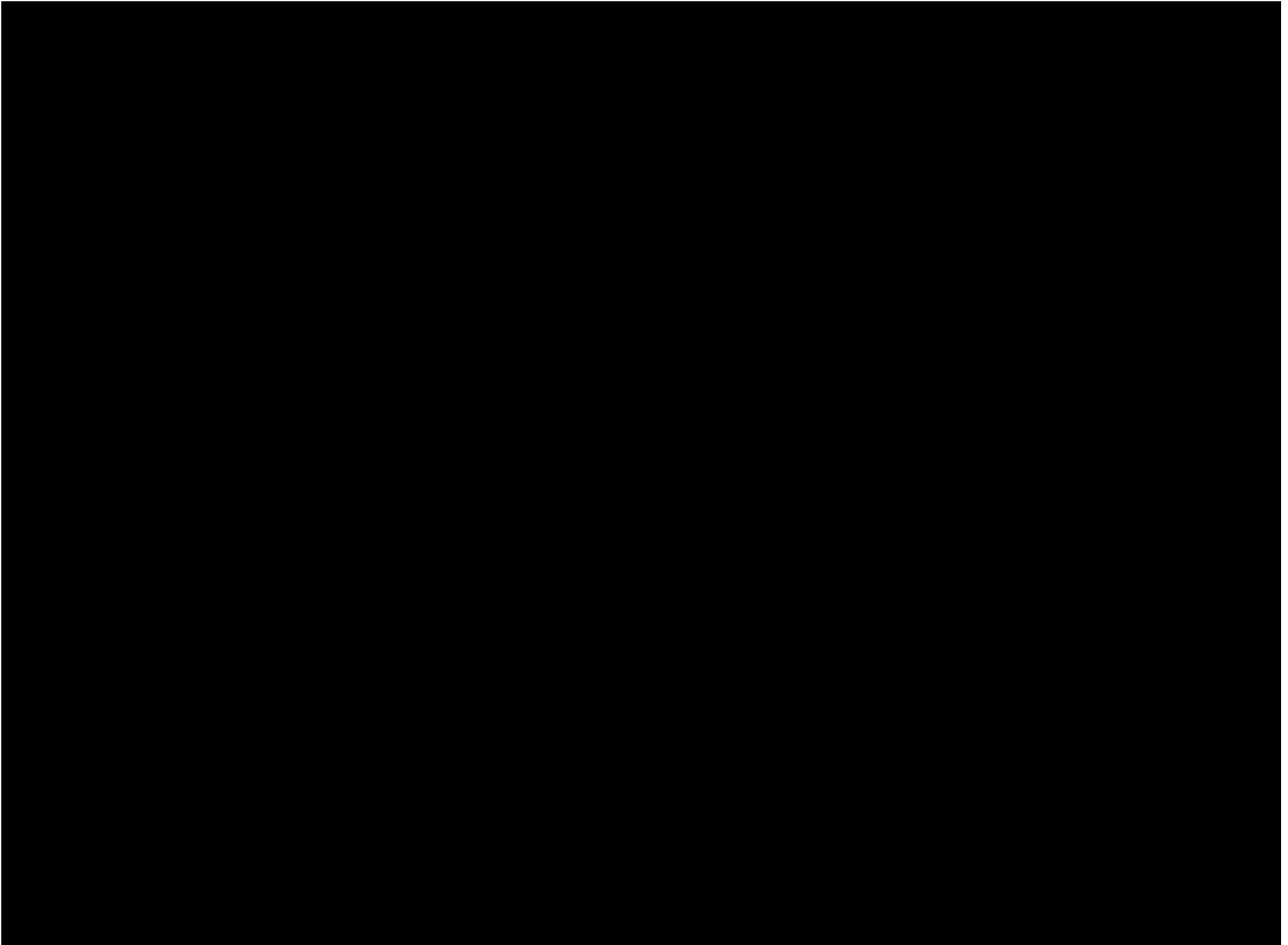


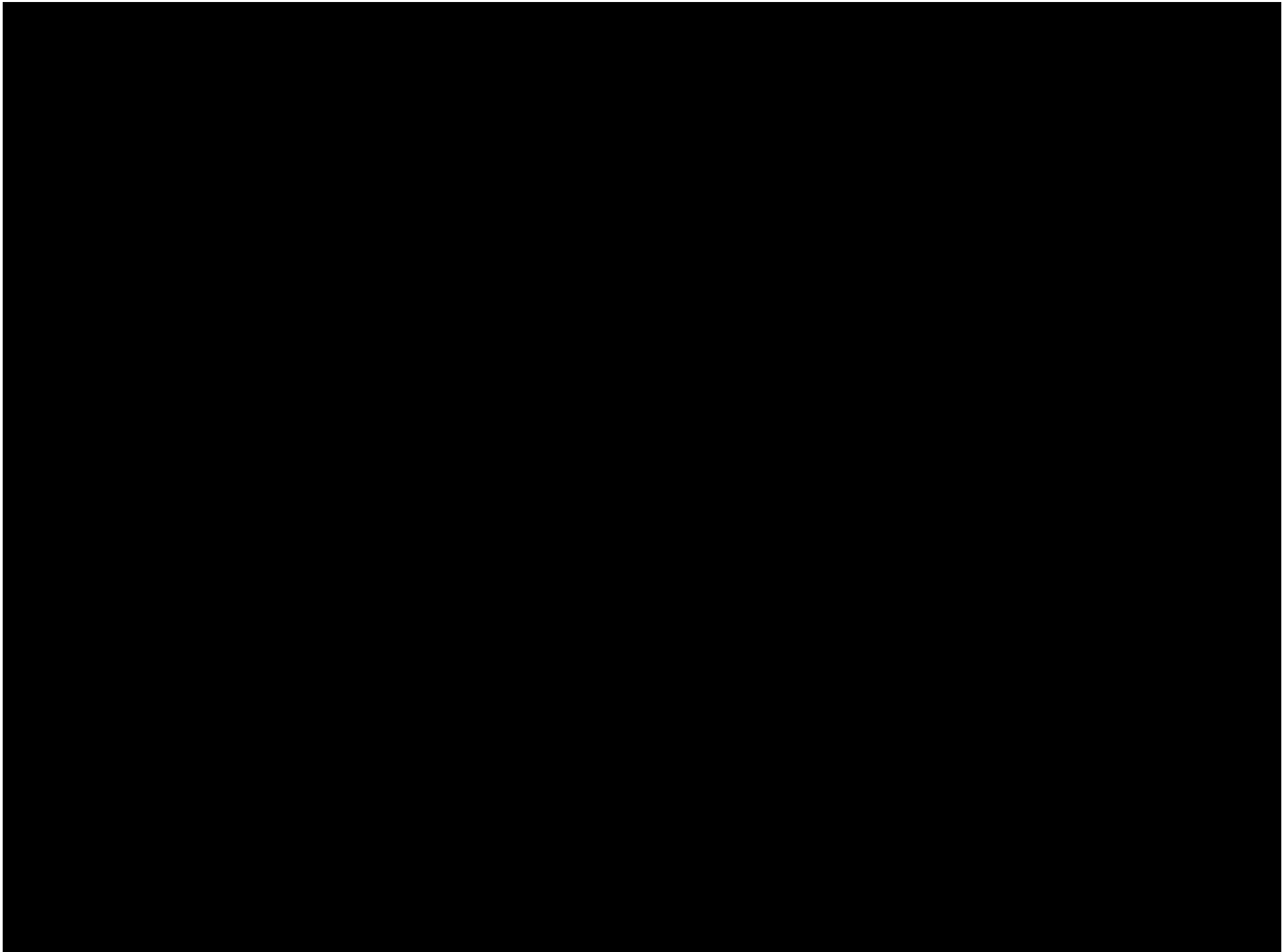


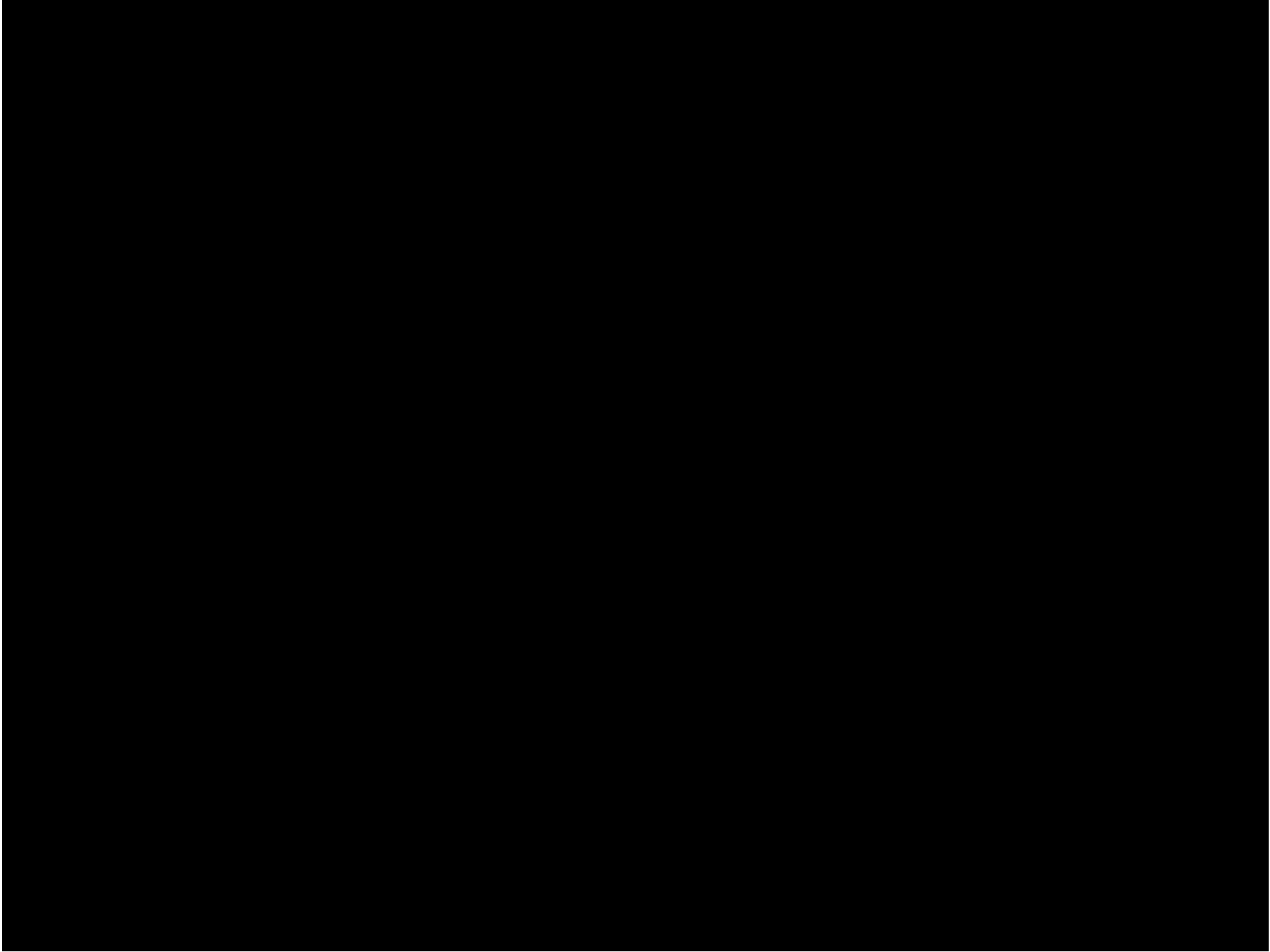


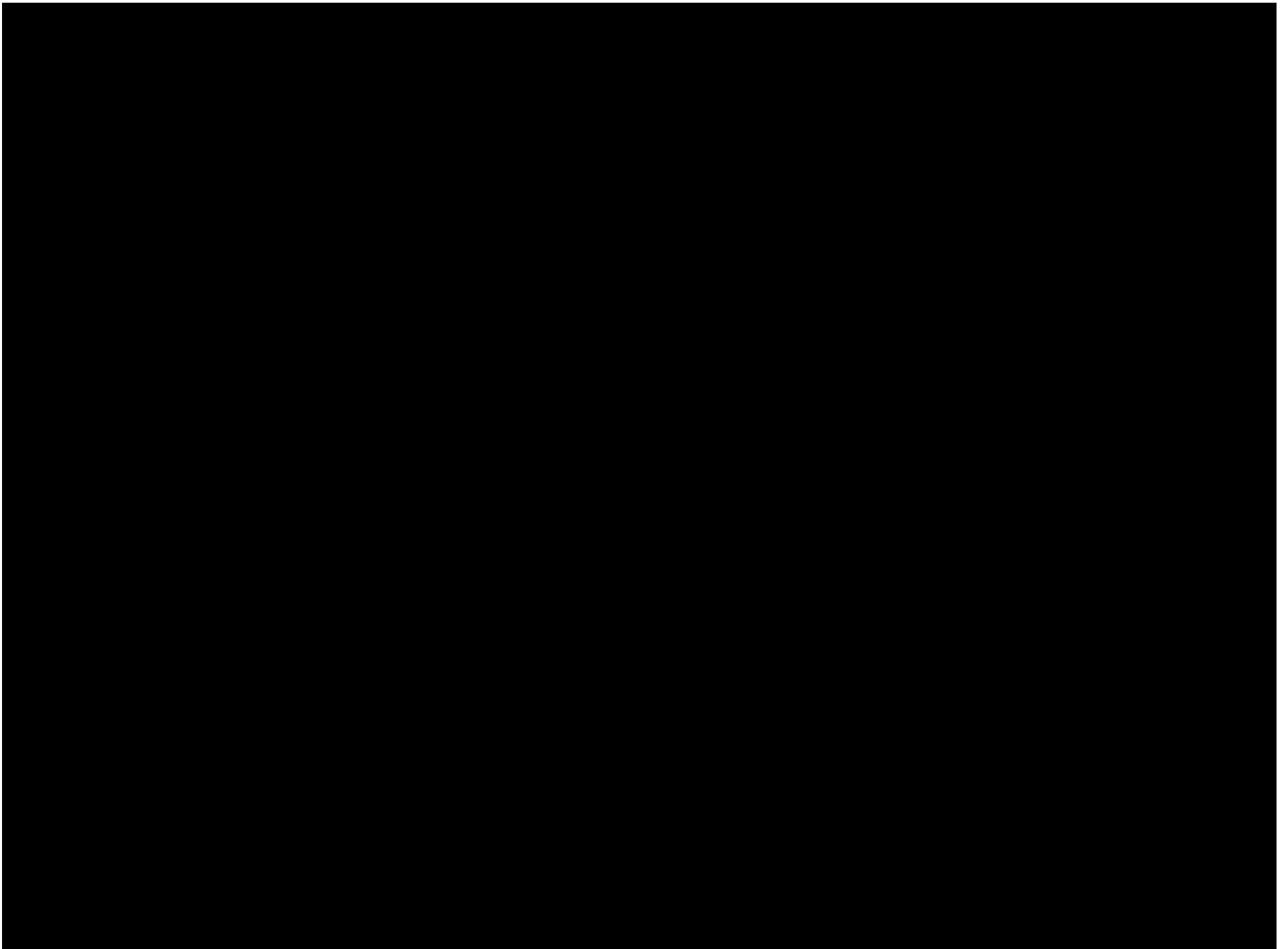


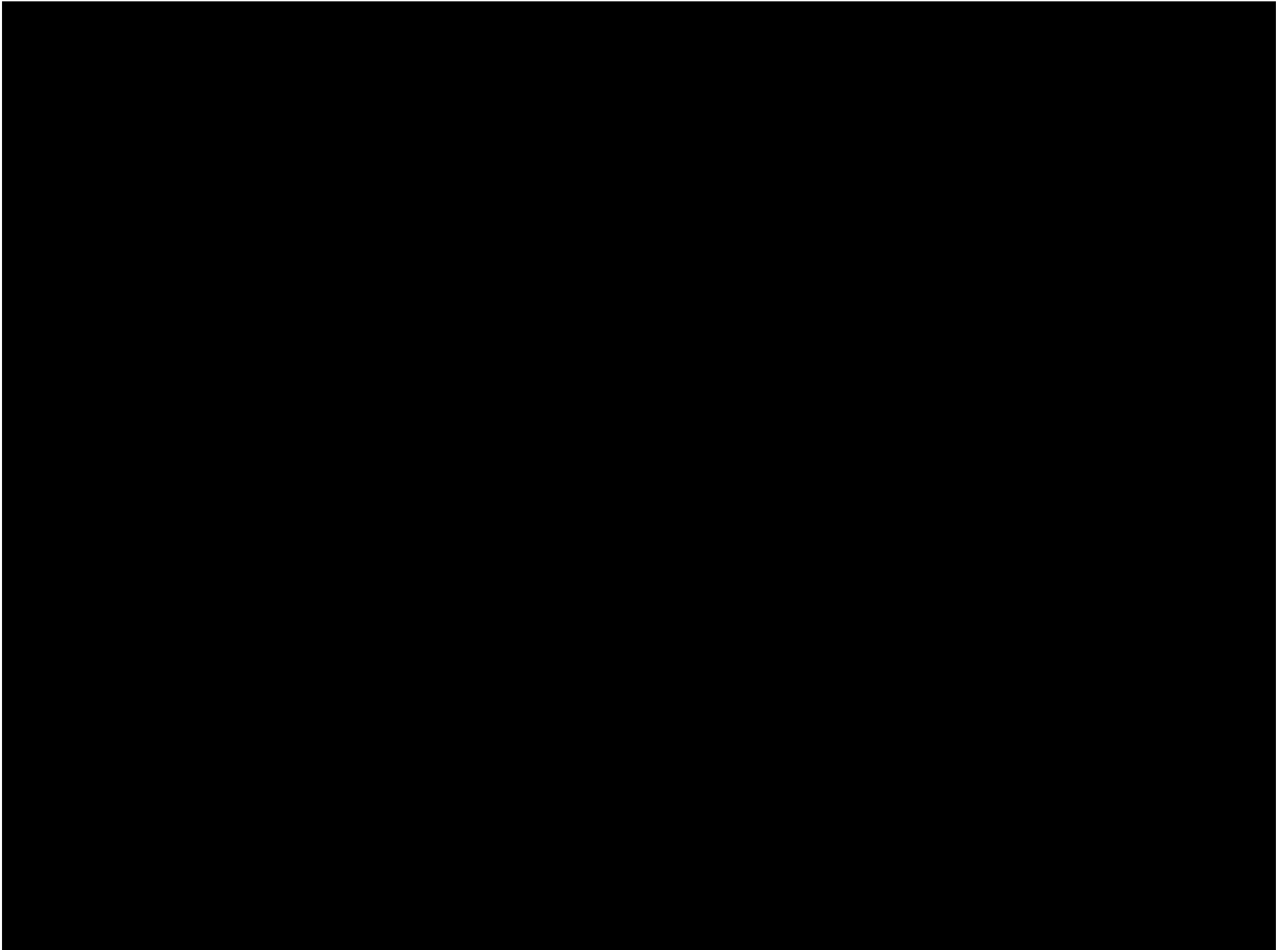


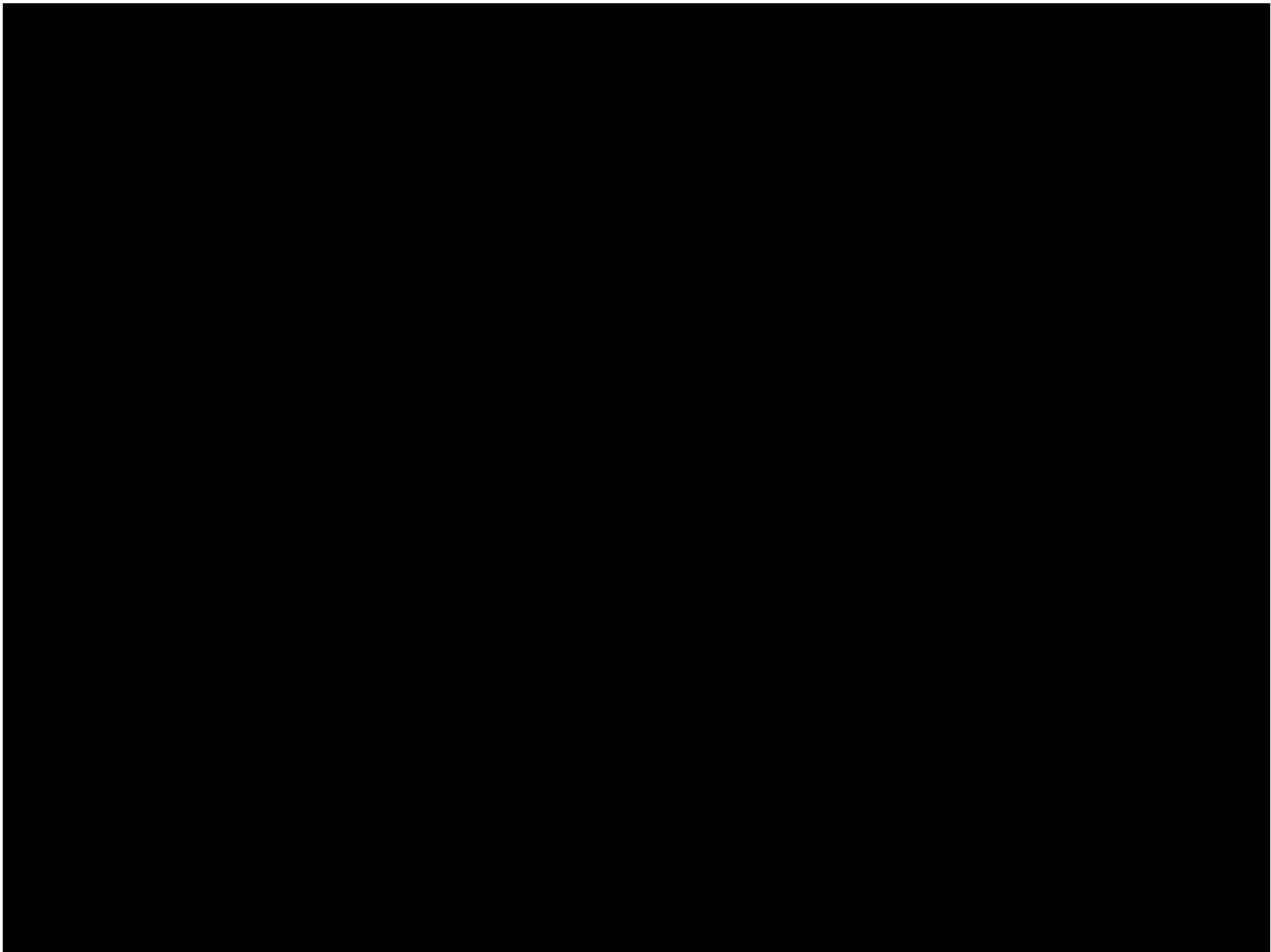


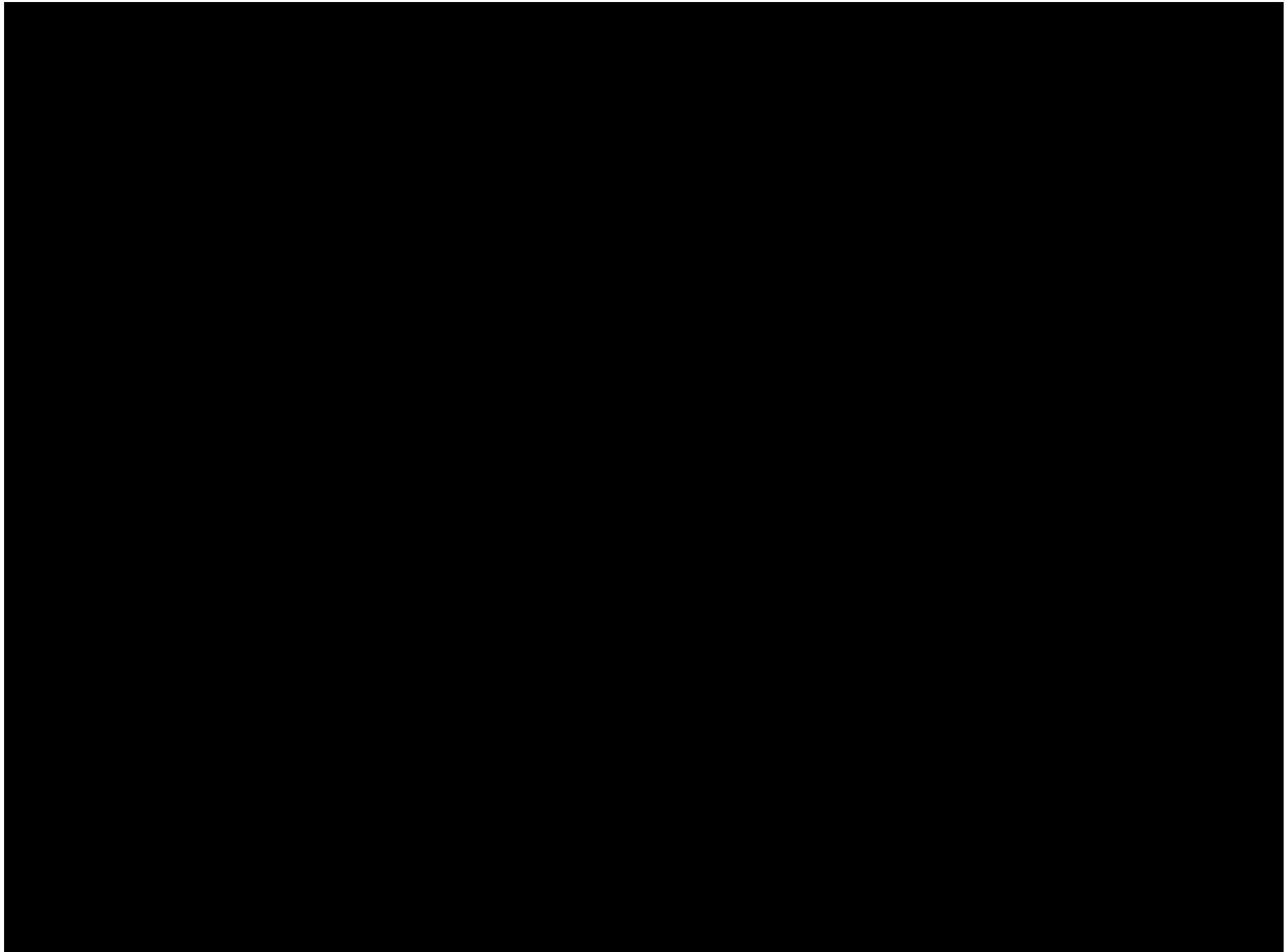












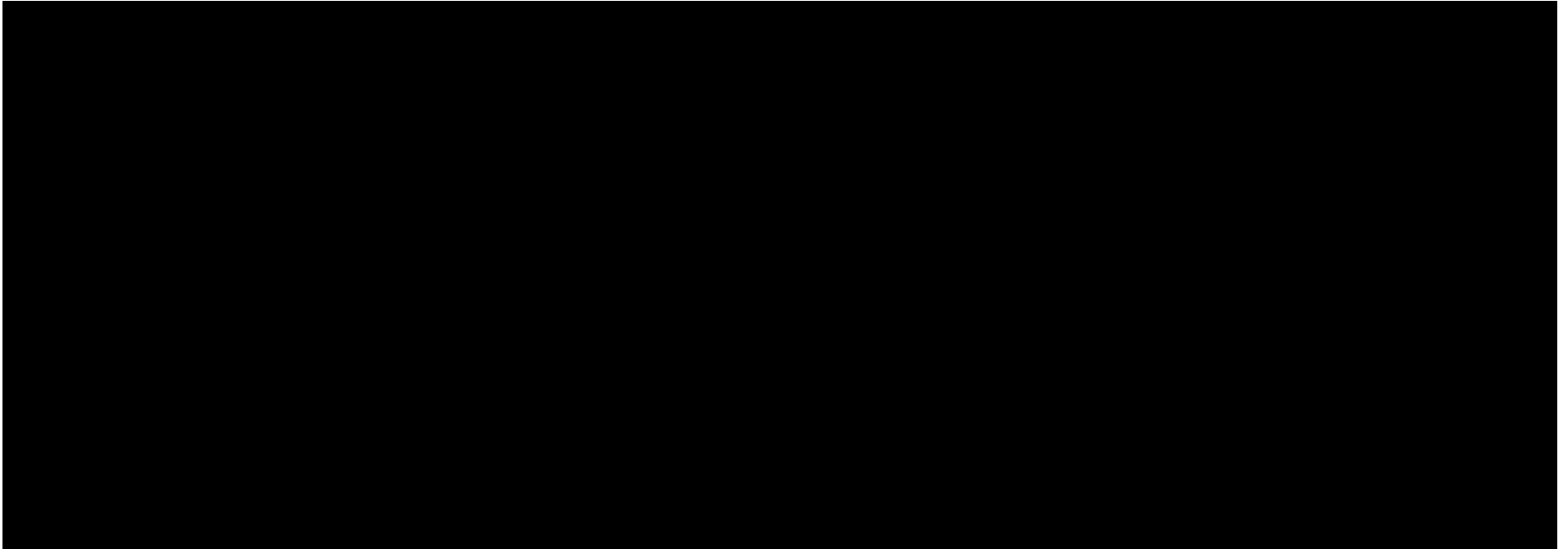


EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---oOo---

CHASOM BROWN; MARIA NGUYEN;
WILLIAM BYATT; JEREMY DAVIS;
and CHRISTOPHER CASTILLO,
individually and on behalf
of all other similarly
situated,

Plaintiffs,

vs.

No. 5:20-cv-03664-LHK

GOOGLE LLC,

Defendant.

_____/

CONFIDENTIAL

REMOTE VIDEOTAPED DEPOSITION OF BRIAN RAKOWSKI

THURSDAY, AUGUST 19, 2021

Stenographically Reported by:

ANDREA M. IGNACIO, CSR, RPR, CRR, CCRR, CLR

California CSR No. 9830

Job No. 741808

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
---oOo---

CHASOM BROWN; MARIA NGUYEN;
WILLIAM BYATT; JEREMY DAVIS;
and CHRISTOPHER CASTILLO,
individually and on behalf
of all other similarly
situated,

Plaintiffs,

vs. No. 5:20-cv-03664-LHK

GOOGLE LLC,
Defendant.

REMOTE VIDEOTAPED DEPOSITION OF BRIAN RAKOWSKI
taken on behalf of the Plaintiffs, on Thursday,
August 19, 2021, beginning at 9:00 a.m., and ending
at 6:02 p.m., Pursuant to Notice, and remotely
before me, ANDREA M. IGNACIO, CSR, RPR, CRR, CLR ~
License No. 9830.

REMOTE APPEARANCES: (Cont.)

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23 Los Angeles, California 90017

ALSO PRESENT: Matthew Gubiotti, Google
Evan Tsilimidos, Videographer
Vanessa Wheeler, Exhibit Technician
---oOo---

REMOTE APPEARANCES:

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WITNESS: Brian Rakowski

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| Exhibit 3 6-12-08 E-mail, Re: Chrome Closing Interviews Today - Summary of P2, P6, P5, Bates GOOG-BRWN-00228597 - '99 | 85 |
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| Exhibit 6 7-17-18 E-mail, Chrome Team Meeting Notes, Bates GOOG-BRWN-00409986 - '87 | 135 |

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|----------|---|-------|----------|--|-------|
| 1 | being a popular completion of the query you typed. | 15:32 | 1 | Q Okay. So if you define "private" to mean how | 15:34 |
| 2 | When you were in Incognito Mode, we just | 15:32 | 2 | Incognito Mode functions, then yes, that would be an | 15:34 |
| 3 | don't send that query to the suggest server. So | 15:32 | 3 | accurate statement? | 15:34 |
| 4 | there's no suggest result that comes back. | 15:32 | 4 | A Well, that's slightly different. But I'm | 15:34 |
| 5 | MR. RICHARDSON: Okay. | 15:33 | 5 | defining "private" to -- you know, there's different | 15:34 |
| 6 | Q Do you agree that people can choose to browse | 15:33 | 6 | interpretations of private. If you're specific about | 15:34 |
| 7 | the web privately by using Chrome in Incognito Mode? | 15:33 | 7 | private meaning your computer won't retain a record of | 15:34 |
| 8 | A It's a bit under-specified. Can you -- can | 15:33 | 8 | it, then -- then yes, that's what it was designed to | 15:34 |
| 9 | you clarify what you mean by use the web privately. I | 15:33 | 9 | do. | 15:34 |
| 10 | need more context. | 15:33 | 10 | Q Okay. Do you consider Incognito Mode for | 15:34 |
| 11 | Q I guess I'm just trying to understand whether | 15:33 | 11 | Chrome to be a browser setting? | 15:34 |
| 12 | or not that's an accurate statement, that you can | 15:33 | 12 | A Browser setting? It -- it would depend on | 15:34 |
| 13 | choose to browse the web privately using Chrome in | 15:33 | 13 | the context for using the word "setting." But in | 15:34 |
| 14 | Incognito Mode? | 15:33 | 14 | general, like, normal parlance, I would say no, it's | 15:34 |
| 15 | A Well, if you're talking about privately in | 15:33 | 15 | not a setting. | 15:34 |
| 16 | terms of private so that your computer doesn't have a | 15:33 | 16 | Q We talked earlier about the Incognito new tab | 15:35 |
| 17 | record of what you -- what sites you went to, which | 15:33 | 17 | page. | 15:35 |
| 18 | was the design intent of Incognito Mode, then yes. | 15:33 | 18 | Do you recall that? | 15:35 |
| 19 | It's private from your roommate, you know, looking at | 15:33 | 19 | A Yes. | 15:35 |
| 20 | your browsing history or whatever. | 15:33 | 20 | Q And -- and we looked at some drafts of the | 15:35 |
| 21 | Q So this -- this goes back to the circularity | 15:33 | 21 | Incognito new tab page. | 15:35 |
| 22 | problem. You can browse incognito using Incognito | 15:33 | 22 | Do you recall that? | 15:35 |
| 23 | Mode if you define Incognito Mode to be what you | 15:34 | 23 | MS. TREBICKA: Objection; misstates -- | 15:35 |
| 24 | designed? | 15:34 | 24 | objection; assumes facts; misstates the record. | 15:35 |
| 25 | A Right. Right. | 15:34 | 25 | THE WITNESS: I think we looked at a -- one | 15:35 |
| Page 244 | | | Page 245 | | |
| 1 | exhibit that showed new tab page. I remember that. | 15:35 | 1 | A Yeah. | 15:36 |
| 2 | MR. RICHARDSON: Right. I'm sorry. | 15:35 | 2 | Q And did you feel that it was important to | 15:36 |
| 3 | Q Do -- can you pull up Exhibit 10? | 15:35 | 3 | include that reference to servers in this disclosure? | 15:36 |
| 4 | Is that easy for you to do? | 15:35 | 4 | A I -- again, I can't remember the -- the | 15:36 |
| 5 | Or have you put all those aside? | 15:35 | 5 | timing of all this. But we did want to be as clear as | 15:36 |
| 6 | A I can do it. | 15:35 | 6 | possible about what happens in this mode. So that's | 15:36 |
| 7 | Q So if you look at Exhibit 10 there down by | 15:35 | 7 | why this page was designed, and including that | 15:36 |
| 8 | the bottom, it says: | 15:35 | 8 | description of what does and doesn't happen was | 15:36 |
| 9 | "Going incognito doesn't affect the behavior | 15:35 | 9 | important. | 15:36 |
| 10 | of other people, servers, or software." | 15:35 | 10 | Q And we had seen some discussions regarding | 15:36 |
| 11 | Do you see that? | 15:35 | 11 | server logging confusion; right? | 15:36 |
| 12 | A At the bottom, there's a lot -- | 15:35 | 12 | A Right. | 15:36 |
| 13 | Q It's a quarter -- | 15:35 | 13 | Q And was this reference to servers in the | 15:36 |
| 14 | MS. TREBICKA: First page, you mean, Beko? | 15:35 | 14 | Incognito new tab page meant to address that server | 15:36 |
| 15 | MR. RICHARDSON: First page, above the five | 15:35 | 15 | logging confusion? | 15:36 |
| 16 | bullets. | 15:36 | 16 | A Again, I don't remember the timing of what | 15:37 |
| 17 | THE WITNESS: Okay. Yeah, yeah. | 15:36 | 17 | came first or second. But this would -- in my mind, | 15:37 |
| 18 | MR. RICHARDSON: Q. Let me read that again. | 15:36 | 18 | this -- this would clarify what this feature does and | 15:37 |
| 19 | It says: | 15:36 | 19 | does not do. | 15:37 |
| 20 | "Going incognito doesn't affect the behavior | 15:36 | 20 | Q Do you know what a GWS ID is, W -- GWS? | 15:37 |
| 21 | of other people, servers, or software." | 15:36 | 21 | A It rings a bell. This is super old. This | 15:37 |
| 22 | Do you see that? | 15:36 | 22 | is, like, 100 years old. | 15:37 |
| 23 | A I see that. | 15:36 | 23 | Q What's your understanding of what a GWS ID | 15:37 |
| 24 | Q And that would include Google servers; | 15:36 | 24 | is? | 15:37 |
| 25 | correct? | 15:36 | 25 | A Well, this is super cobwebs. GWS was the | 15:37 |

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|----------|--|-------|----------|--|-------|
| 1 | acronym for Google Web Server, GWS. It was the front | 15:37 | 1 | when you have Exhibit 21 in front of you. | 15:39 |
| 2 | end for much of our traffic. I cannot recall right | 15:37 | 2 | A I just opened it. | 15:39 |
| 3 | now what the -- what -- what ID was involved. | 15:38 | 3 | Q And when you're ready, my first question will | 15:39 |
| 4 | Q Do you have any understanding as to whether | 15:38 | 4 | be whether or not Exhibit 21 is an e-mail you received | 15:39 |
| 5 | or not a GWS ID is sent when someone is in Incognito | 15:38 | 5 | as part of your work for Google? | 15:39 |
| 6 | Mode? | 15:38 | 6 | A I'm -- I'm browsing it. | 15:39 |
| 7 | MS. TREBICKA: Objection; vague as to time | 15:38 | 7 | (Witness reading document.) | 15:39 |
| 8 | period. | 15:38 | 8 | Okay. I've read it. And as part of | 15:41 |
| 9 | THE WITNESS: I -- I can't recall what the | 15:38 | 9 | chrome-team, I would have -- or chrome-leads, I would | 15:41 |
| 10 | GWS ID was anymore, so I don't know. | 15:38 | 10 | have gotten this e-mail. | 15:41 |
| 11 | MR. RICHARDSON: That's fine. | 15:38 | 11 | Q And do you see on the second page where | 15:41 |
| 12 | Q Do you have any understanding as to whether | 15:38 | 12 | there's an e-mail from Jim Roskind where he writes: | 15:41 |
| 13 | or not something called the X client data header is | 15:38 | 13 | "Sorry If Already Known: A friend of mine at | 15:41 |
| 14 | sent when someone is in Incognito Mode? | 15:38 | 14 | AOL called today to chat with me about the new | 15:41 |
| 15 | A I'm trying to remember that header. I -- all | 15:38 | 15 | 'inprivate filtering' in IE 8. Apparently it is | 15:41 |
| 16 | these headers that start with an X, I don't -- I don't | 15:38 | 16 | making his life hard, as it is seemingly targeted at | 15:41 |
| 17 | recall specifically. | 15:38 | 17 | harming providers of advertisements." | 15:41 |
| 18 | MR. RICHARDSON: Go to the next exhibit, | 15:38 | 18 | Do you see that? | 15:41 |
| 19 | Exhibit 21. | 15:38 | 19 | A I see that. | 15:41 |
| 20 | (Document remotely marked Exhibit 21 | 15:38 | 20 | Q And then Mr. Mike Belshe responded: | 15:41 |
| 21 | for identification.) | 15:38 | 21 | "This has come up a number of times and does | 15:41 |
| 22 | MR. RICHARDSON: Exhibit 21 is a document | 15:38 | 22 | appear to be a significant threat to google." | 15:41 |
| 23 | produced by Google, with Production Nos. '225677 | 15:39 | 23 | Do you see that? | 15:41 |
| 24 | through '225679, with the metadata sheet. | 15:39 | 24 | A Yes. | 15:41 |
| 25 | Q Mr. Rakowski, would you please let me know | 15:39 | 25 | Q To the first page, Mr. Upson writes: | 15:41 |
| Page 248 | | | Page 249 | | |
| 1 | "I believe Sundar is involved in Google's | 15:42 | 1 | "It may not be something suitable for email." | 15:43 |
| 2 | response. It may not be something suitable for | 15:42 | 2 | A No, I don't -- I don't recall talking to him | 15:43 |
| 3 | email." | 15:42 | 3 | about this e-mail. | 15:43 |
| 4 | Do you see that? | 15:42 | 4 | Q Did you ask Mr. Pichai why he wrote: | 15:43 |
| 5 | A I see it. | 15:42 | 5 | "Pls dont discuss more in this thread." | 15:43 |
| 6 | Q And do you understand that reference to | 15:42 | 6 | A I did not. | 15:43 |
| 7 | Sundar to be a reference to Sundar Pichai? | 15:42 | 7 | Q Were there other occasions where Mr. Pichai | 15:43 |
| 8 | A Yes. | 15:42 | 8 | told you and other employees to not put things in | 15:43 |
| 9 | Q And do you have any understanding as to what | 15:42 | 9 | writing? | 15:43 |
| 10 | Mr. Upson meant by: | 15:42 | 10 | A It's possible. | 15:43 |
| 11 | "It may not be something suitable for email." | 15:42 | 11 | Q Can you recall any of those specific | 15:43 |
| 12 | A I don't know. I would have to -- I would | 15:42 | 12 | occasions? | 15:43 |
| 13 | have to guess at what he meant. | 15:42 | 13 | A No, I can't recall any specific instances. | 15:43 |
| 14 | Q In your experience, are there certain topics | 15:42 | 14 | Q And then at the very top here, it says: | 15:43 |
| 15 | at Google that are not suitable for e-mail? | 15:42 | 15 | "Totally aware that this is a big problem." | 15:43 |
| 16 | A There are certain things that -- that we just | 15:42 | 16 | Do you see that? | 15:44 |
| 17 | don't want to -- it's inefficient to go back and forth | 15:42 | 17 | A Yes. | 15:44 |
| 18 | over e-mail on a complicated, nuanced topic. That -- | 15:42 | 18 | Q If you know, why was this being described as | 15:44 |
| 19 | that tends to be a reason why Linus would have gone | 15:42 | 19 | "a big problem"? | 15:44 |
| 20 | that route. | 15:43 | 20 | A I don't know. | 15:44 |
| 21 | Q Sitting here today, it's your testimony that | 15:43 | 21 | MS. TREBICKA: Calls for speculation. | 15:44 |
| 22 | Mr. Upson was describing this as not suitable for | 15:43 | 22 | THE WITNESS: Yeah, I don't know. I don't -- | 15:44 |
| 23 | e-mail for efficiency purposes; is that correct? | 15:43 | 23 | this whole thread is a bit -- I can't remember much of | 15:44 |
| 24 | A That's my -- that's my guess. | 15:43 | 24 | it. | 15:44 |
| 25 | Q Did you ask Mr. Upson why he wrote: | 15:43 | 25 | MR. RICHARDSON: Q. Do you recall any | 15:44 |

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|----------|--|-------|----------|--|-------|
| 1 | discussions with Mr. Pichai about this? | 15:44 | 1 | dependent on the operating system upon which you're | 15:45 |
| 2 | A I don't recall discussions about in private | 15:44 | 2 | running. | 15:45 |
| 3 | browsing. | 15:44 | 3 | But in a normal -- you know, I don't remember | 15:45 |
| 4 | Q Okay. Does Google have profiles tied to | 15:44 | 4 | how -- I don't actually know how profiles work in | 15:45 |
| 5 | Incognito browsing? | 15:44 | 5 | different operating systems anymore. But at -- on | 15:45 |
| 6 | MS. TREBICKA: Objection; vague, and as to | 15:44 | 6 | Windows, it was pretty onerous to switch Windows | 15:45 |
| 7 | time period, too. | 15:44 | 7 | profiles. | 15:45 |
| 8 | THE WITNESS: What do you mean by "profiles"? | 15:44 | 8 | So we considered building a Chrome profile so | 15:45 |
| 9 | MR. RICHARDSON: Q. Do you ever use profiles | 15:44 | 9 | that you could have multiple user profiles, either for | 15:45 |
| 10 | in connection with your work for Google? | 15:44 | 10 | different people or, you know, maybe have a work | 15:46 |
| 11 | A Yeah, the -- | 15:44 | 11 | version and a personal version or whatever. | 15:46 |
| 12 | Q -- profiles? | 15:44 | 12 | Q And would there be a profile linked to an | 15:46 |
| 13 | A The most common -- the use that I'm familiar | 15:44 | 13 | Incognito browsing session, a browser profile? | 15:46 |
| 14 | with is the browser profile. And a browser -- should | 15:44 | 14 | A That -- that would be how I would -- I would | 15:46 |
| 15 | I -- should I explain what that is? | 15:45 | 15 | describe it. You could use Incognito within any of | 15:46 |
| 16 | Q Please let me know what a browser profile is. | 15:45 | 16 | those browser profiles. | 15:46 |
| 17 | A Okay. A browser profile is an instance of | 15:45 | 17 | MR. RICHARDSON: Let's just look quickly at | 15:46 |
| 18 | the browser. So for instance, the feature that one | 15:45 | 18 | Exhibit 22. | 15:46 |
| 19 | could build, and I believe we considered building, but | 15:45 | 19 | (Document remotely marked Exhibit 22 | 15:46 |
| 20 | I don't think -- I don't know that we built it, was | 15:45 | 20 | for identification.) | 15:46 |
| 21 | you could have a separate profile for you, and then | 15:45 | 21 | MR. RICHARDSON: Exhibit 22 is a document | 15:46 |
| 22 | another profile for your wife. | 15:45 | 22 | produced by Google with Production No. '225151, with | 15:46 |
| 23 | So they would keep your bookmarks separate | 15:45 | 23 | the metadata sheet. | 15:46 |
| 24 | and all -- you know, basically be a separate instance | 15:45 | 24 | THE WITNESS: Okay. I have it. | 15:47 |
| 25 | of the browser without having to -- it's -- it's a bit | 15:45 | 25 | MR. RICHARDSON: Q. Mr. Rakowski, is | 15:47 |
| Page 252 | | | Page 253 | | |
| 1 | Exhibit 22 an e-mail you received as part of your work | 15:47 | 1 | know if I've ever read this e-mail before, even though | 15:48 |
| 2 | for Google? | 15:47 | 2 | I might have gotten it. | 15:48 |
| 3 | A "Chromium-dev." It looks like it was sent to | 15:47 | 3 | (Witness reading document.) | 15:48 |
| 4 | the chromium-dev list, of which I can't remember | 15:47 | 4 | Okay. The -- this quickly gets out of my | 15:48 |
| 5 | whether I was an owner or a member. | 15:47 | 5 | depth. But the -- what I -- what I believe Tim, who | 15:48 |
| 6 | Q If you look at the metadata, you'll see at | 15:47 | 6 | wrote this message, is -- is describing is the | 15:48 |
| 7 | the very bottom there all custodies. It has your | 15:47 | 7 | underlying infrastructure upon which we built | 15:48 |
| 8 | name, Brian Rakowski; right? | 15:47 | 8 | Incognito was to effectively create a fresh browser | 15:48 |
| 9 | A That's right. | 15:47 | 9 | profile that you would use. | 15:48 |
| 10 | Q So I'll just represent that Google produced | 15:47 | 10 | As I mentioned before, it's like getting a | 15:48 |
| 11 | this as a document from your files. | 15:47 | 11 | new computer, using it, and then you tear it down and | 15:48 |
| 12 | A Okay. Then I will -- | 15:47 | 12 | throw it away when you -- when you close the window. | 15:49 |
| 13 | Q I just wanted to ask about the first | 15:47 | 13 | So I think he's saying that the | 15:49 |
| 14 | sentence, where it says: | 15:47 | 14 | infrastructure is implemented in this general purpose | 15:49 |
| 15 | "We do officially support profiles: they're | 15:47 | 15 | profiles thing, which could be used in other ways | 15:49 |
| 16 | how Incognito works." | 15:47 | 16 | also. | 15:49 |
| 17 | Do you see that? | 15:47 | 17 | Q And is data from that Incognito profile ever | 15:49 |
| 18 | A I see that. | 15:47 | 18 | sent to Google servers? | 15:49 |
| 19 | Q Do you have an understanding of what that | 15:47 | 19 | MS. TREBICKA: Objection; overbroad; vague. | 15:49 |
| 20 | means? | 15:47 | 20 | THE WITNESS: You'll have to be more specific | 15:49 |
| 21 | A Yeah. | 15:47 | 21 | from a "profile." | 15:49 |
| 22 | Q What do you understand that to mean that: | 15:47 | 22 | MR. RICHARDSON: I'm not sure how to be more | 15:49 |
| 23 | "We do officially support profiles: they're | 15:48 | 23 | specific. | 15:49 |
| 24 | how Incognito works." | 15:48 | 24 | Q There's data associated with that Incognito | 15:49 |
| 25 | A Let me -- let me just read this. I don't | 15:48 | 25 | profile; correct? | 15:49 |

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1 MS. TREBICKA: We object, but we can take 18:02
 2 that up with communications outside of the record of 18:02
 3 this deposition. 18:02
 4 MR. RICHARDSON: Thank you. 18:02
 5 THE VIDEOGRAPHER: The time is 6:02. That 18:02
 6 concludes today's deposition. 18:02
 7 THE REPORTER: Do you need a copy and rough 18:03
 8 sent to you as well? 18:03
 9 MS. TREBICKA: Yes, please. 18:03
 10 MR. RICHARDSON: Yes, please, with us as 18:03
 11 well. You can send that to -- to Rosie and myself and 18:03
 12 Mark Mao. 18:03
 13 (WHEREUPON, the deposition ended 18:04
 14 at 6:02 p m.) 18:04
 15 ---oOo---

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1 CERTIFICATE OF REPORTER
 2
 3 I, ANDREA M. IGNACIO, hereby certify that the
 4 witness in the foregoing remote deposition was by me
 5 remotely sworn to tell the truth, the whole truth, and
 6 nothing but the truth in the within-entitled cause;
 7 That said deposition was taken in shorthand
 8 by me, a disinterested person, at the time and place
 9 therein stated, and that the testimony of the said
 10 witness was thereafter reduced to typewriting, by
 11 computer, under my direction and supervision;
 12 That before completion of the deposition,
 13 review of the transcript [x] was [] was not
 14 requested. If requested, any changes made by the
 15 deponent (and provided to the reporter) during the
 16 period allowed are appended hereto.
 17 I further certify that I am not of counsel or
 18 attorney for either or any of the parties to the said
 19 deposition, nor in any way interested in the event of
 20 this cause, and that I am not related to any of the
 21 parties thereto.
 22 Dated:
 23 _____
 24 ANDREA M. IGNACIO, RPR, CRR, CCRR, CLR, CSR No. 9830
 25

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1 DECLARATION UNDER PENALTY OF PERJURY
 2
 3 I, BRIAN RAKOWSKI, do hereby certify under
 4 penalty of perjury that I have read the foregoing
 5 transcript of my remote deposition, taken on
 6 August 19, 2021, that I have made such corrections
 7 as appear noted herein in ink; initialed by me;
 8 that my testimony contained herein, as corrected,
 9 is true and correct.
 10
 11 DATED this ____ day of _____, 2021, at
 12 _____.
 13
 14 _____
 15 SIGNATURE OF WITNESS
 16
 17
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 19
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1 DEPOSITION ERRATA SHEET
 2
 3 Page No. ____ Line No. ____ Change to: _____
 4 _____
 5 Reason for change: _____
 6 Page No. ____ Line No. ____ Change to: _____
 7 _____
 8 Reason for change: _____
 9 Page No. ____ Line No. ____ Change to: _____
 10 _____
 11 Reason for
 12 change: _____
 13 Page No. ____ Line No. ____ Change to: _____
 14 _____
 15 Reason for
 16 change: _____
 17 Page No. ____ Line No. ____ Change to: _____
 18 _____
 19 Reason for
 20 change: _____
 21 Page No. ____ Line No. ____ Change to: _____
 22 _____
 23 Reason for
 24 change: _____
 25 SIGNATURE: _____ DATE: _____